In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff and Respondent,** **v.** **MICHAEL RAPHAEL CANIZALES et al.,** **Defendants and Appellants.**	Case No. S221958

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INTRODUCTION

Appellants Michael Canizales and KeAndre Windfield—both Ramona Blocc gang members—sought revenge and retaliation when they fired five shots at rival gang members Denzel Pride and Travion Bolden during an outdoor block party attended by 30 neighbors. Pride and Bolden escaped without harm but appellants killed one innocent bystander.

A jury found appellants guilty of one count of murder and two counts of attempted murder. The prosecutor's theories as to the attempted murders were that appellants specifically intended to kill both Pride and Bolden, or, alternatively, specifically intended to kill Pride and concurrently intended to kill Bolden, the only other person in the kill zone. Appellants dispute their conviction for the attempted murder of Bolden. They argue that the trial court erred when it instructed the jury on the kill zone theory of attempted murder with CALCRIM No. 600. Specifically, they argue that insufficient evidence supported an instruction on the kill zone theory. They also contend the instruction permitted the jury to convict appellants for the attempted murder of Bolden without the requisite proof of a specific intent to kill. The Court of Appeal determined sufficient evidence supported instruction on the kill zone theory, and that the instruction did not permit a conviction for attempted murder based on a finding of implied malice, as opposed to a specific intent to kill. The Court of Appeal opinion, grounded in the law as articulated in *People v. Bland* (2002) 28 Cal.4th 313 (*Bland*), and backed by subsequent Supreme Court precedent, should be affirmed.

A kill zone is created when an assailant applies force designed to kill everyone in an area. Substantial evidence supported a finding appellants created a kill zone around Pride to ensure his death, and that Bolden stood within that zone. The evidence showed that Windfield fired five shots at Pride as Bolden stood in close proximity to Pride and within the line of fire. It was reasonable for the jury to infer that Windfield created a kill zone

around Pride and used sufficient means to kill the only two men in the zone. Because substantial evidence supported its application, it was proper for the trial court to instruct on the kill zone theory. The language of CALCRIM No. 600, which is an accurate statement of the law, permits the jury to draw an inference of concurrent intent when the evidence supports it. It is properly given in cases in which the defendant's intent to kill a nontargeted victim is contested. Any conceivable error was harmless because by finding appellants committed the attempted murder of Bolden willfully, deliberately and with premeditation, there is no question the jury found appellants specifically intended to kill Bolden.

STATEMENT OF THE CASE AND FACTS

Bolden and Pride were members of the Hustla Squad Clicc, a Rialto based criminal street gang. (2RT 511; 3RT 672.) Appellants Canizales and Windfield were members of their rival, Ramona Blocc gang. (2RT 323, 368, 523; 3RT 654.) In 2007, a Hustla Squad gang member killed a Ramona Blocc gang member. (2RT 517–518.) According to gang expert Detective Gregory Marquez, it was expected for Ramona Blocc to retaliate with escalated violence for the killing of one of its members. (2RT 519; 3RT 682.) Shootings between the two gangs were common. (2RT 475, 511–512, 518; 3RT 632.)

A. Appellant Canizales Argued with Victims Bolden and Pride on the Day of the Shooting

Around noon on July 18, 2008, Bolden went to Taco Bell in the city of Rialto, a regular hangout for teenagers. (1RT 147, 178; 2CT 479.) Bolden spotted Canizales, a known rival, who was with a girl. The girl and Canizales approached and Canizales shook Bolden's hand, which struck Bolden as suspicious. Canizales did this just as Pride showed up, making Bolden suspect Canizales was stirring up trouble. (2CT 480.) Pride, who came to Taco Bell because the girl had arranged to meet him there, saw

them and began arguing with Canizales over the girl. (2CT 480–481.) Canizales left before the argument escalated into a fight. (2CT 481–482.) Bolden and Pride left together as well. (2CT 481.)

In the late afternoon of that same day, Bolden and several girls were in front of his apartment on the 200 block of Jackson Street. (1RT 70, 72–73, 148, 153, 156; 2CT 479.) One of the girls saw Canizales and called him over. (1RT 73, 153, 160, 162–163.) Canizales approached Bolden's group, but was no longer acting friendly. (1RT 75, 163–164.) This time, Canizales looked at Bolden, aggressively called out, "what's up," and asked Bolden where he was from. (1RT 76–77, 93, 165; 2CT 477–478.) Bolden, believing Canizales was asking him what gang he was from, responded, "what's up." (1RT 77, 165.) Both men started throwing up gang signs, and Bolden took his shirt off, preparing to fight. (1RT 78, 166; 2RT 375; 3RT 727; 2CT 482.)

Canizales left the area before a fight started and walked up Jackson Street to Willow Avenue toward the Superior grocery store. (1RT 79–80, 166; 2CT 482.) Once at the store, Canizales sent an associate to find appellant Windfield, who was the leader of his gang and was known as the "Hustla Squad Killa." (2RT 522; 3RT 688, 741–742.) Canizales waited. (3RT 742.)

Bolden felt disrespected by Canizales's actions and sought out Pride to discuss what had happened. (1RT 168–171, 174; 2CT 483.) Pride was outside his apartment at 330 Jackson Street. (1RT 174; 3RT 550.)

B. Appellants Organized the Attack While the Victims Attended an Outdoor Block Party

Around this time, approximately 30 neighbors gathered in the street for a summer block party at 300 Jackson Street. (1RT 107.) On the west end of the block was a cul-de-sac and park area. (2RT 362; 2CT 518 [Exhibit 26].) Willow Avenue intersected Jackson Street at the east end of

the block. (1RT 79; 2CT 518 [Exhibit 26].) Jackson Street extended approximately 352 feet from Willow to the park. (2CT 518–519 [Exhibit 26].) The neighbors set up tents, played music, talked and danced in the street. (1RT 182–183.) Ramona Jones, her friend Leica Cooksey and their girlfriends were among those enjoying the party. (2RT 398.) They talked and danced to music played from Cooksey's car, which was parked at 329 West Jackson, about half way down the block. (2RT 400–401; 3RT 716 [See Exhibit 58].) None of them was a gang member. That area was not considered turf for any gang. (3RT 692.)

At 8:34 p.m., Canizales was spotted outside the Superior grocery store talking to Windfield. (3RT 741; 2RT 323–324, 413–414.) A vehicle pulled up and Windfield patted the car with his hand as he called out, "Jackson Street." The car drove off in that direction. (2RT 419–420, 422.) Windfield and Canizales began throwing gang signs and yelling "Ramona Blocc!" They then strutted and skipped toward Jackson Street like "boxer[s] getting ready to box." (2RT 424–425, 434–435, 442.)

C. Appellants Found Pride and Bolden at the Block Party, Started Shooting and Killed an Innocent Bystander

Back on Jackson Street, Bolden and Pride were at the block party. (1RT 184, 186.) The two of them stood in the street talking, on the same side of the street where Cooksey and her friends were dancing near Cooksey's car, but farther east toward Willow. (1RT 184–185, 187; see Exhibit 8 [the dot represents where Bolden and Pride stood, about where the black and white gates met].) The other neighbors were spread about the street dancing. (1RT 183.) Bolden observed an unfamiliar car pass by Jackson Street several times before parking on Willow. (1RT 187–188, 204; 2CT 484–485.) As Bolden and Pride talked, Bolden watched five or six men, including Canizales and Windfield, line up across Willow where it intersected with Jackson Street. (1RT 186 [see Exhibit 8], 190, 204, 210–

212, 228; 2RT 323; 3RT 575 [see Exhibit 55].) Windfield stood near a manhole cover on Willow, which was just west of the intersection with Jackson. (1RT 228–229; 2CT 518 [Exhibit 6].) The men were about 150 feet away from Pride and Bolden.[1] (2CT 519; 3RT 570.) Pride and Bolden stood between Windfield and Cooksey, who was still dancing behind her car. (1RT 186 [see Exhibit 8].)

Windfield pulled a gun from his waist area. (1RT 208; 3RT 522.) He started to hand the gun to Canizales but took it back. (2CT 507; 1RT 209, 213, 246.) Windfield called out, "That's the little nigga. Bust!"[2] (1RT 206, 249; 2RT 486.) Bolden heard gunshots and saw sparks as Windfield repeatedly fired the gun. (1RT 190, 192–193, 200, 213.) Bolden believed Pride was the primary target, but would have been hit first because he stood between the gun and Pride. (1RT 200, 208, 212, 216–217, 231–232, 247.) It also appeared he was shooting at Bolden. (3RT 569.) Pride grabbed Bolden and the two started running. (1RT 190, 194–196, 250.) Shots continued firing as they ran. (1RT 201.) Pride ran away from the shooter and behind a bus, which was parked on the same side of the street as Cooksey's car. (3RT 751.)

People were crying and screaming. (1RT 114.) Cooksey had been shot in her left lower abdomen and died as a result of her injuries. (1RT 138; 2RT 405; 3RT 720 [Exhibit 64].) The police found five .9 millimeter bullet casings, fired from the same firearm, approximately 100 feet from

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[1] Estimates of distance varied widely. (See, e.g., 2RT 339 [Bolden and Pride were 25 feet from Windfield]; 3RT 570 [Pride stood 150–200 feet from the shooter], 722 [Cooksey was found 100 feet from the discharged bullet casings].)

[2] Bust meant "Get out of Dodge or you're going to get shot." (1RT 207.)

where Cooksey was shot, near the northwest corner of Jackson and Willow, where Windfield stood during the shooting. (3RT 719–720, 722, 762.)

D. One Year Later, Police Connected Appellants to the Crime

The case stalled after the initial police investigation. (3RT 745.) On June 11, 2009, however, a friend of Windfield's reported to police that Windfield confessed that he and Canizales had gone to "the Jacksons" and killed a girl. (3RT 627–629.) Windfield claimed that they went after a member of the Hustla Squad who killed his cousin. (3RT 630–632.)

Canizales and Windfield were charged with the willful, deliberate and premeditated murder of Cooksey (Pen. Code,[3] § 187, subd. (a); count 1), the willful, deliberate, and premeditated attempted murders of Bolden and Pride (§§ 664, 187, subd. (a); counts 2, 3), and street terrorism (§ 186.22, subd. (a); count 4.) (1CT 139–143.) As to counts 1–3, the information alleged that both defendants committed the crimes for the benefit of a criminal street gang, pursuant to section 186.22, subdivision (b)(1). The prosecution also charged as to count 1 that a principal personally and intentionally discharged a firearm causing death, and as to counts 2 and 3, that a principal personally and intentionally discharged a firearm within the meaning of section 12022.53, subdivisions (c), (d), and (e)(1). (1RT 139–143.)

The case proceeded to a joint trial at which the prosecution presented evidence of the facts as stated above. Additionally, Detective Marquez opined that appellants committed these crimes to retaliate against the violence committed against their gang and to increase their own status within the gang. (3RT 682.)

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[3] All further statutory references are to the Penal Code unless otherwise indicated.

The court instructed without objection on the kill zone theory using CALCRIM No. 600, and included all the bracketed language. (See 3RT 779–782.) Specifically, the court instructed the jury that the prosecution had to prove two elements to prove attempted murder:

> 1. The defendant took a direct but ineffective step toward killing another person; AND
>
> 2. The defendant intended to kill that person.
>
> . . .
>
> A person may intend to kill a specific victim or victims and at the same time intend to kill everyone in a particular zone of harm or "kill zone." In order to convict a defendant of the attempted murder of Trayvon[4] Bolden, the People must prove that the defendant not only intended to kill Denzell Pride but also either intended to kill Trayvon Bolden, or intended to kill everyone within the kill zone. If you have a reasonable doubt whether the defendant intended to kill Trayvon Bolden or intended to kill Denzell Pride by killing everyone in the kill zone, then you must find the defendant not guilty of the attempted murder.
>
> . . .

(1CT 233 [CALCRIM No. 600]; 3RT 823.) Additionally, the court instructed the jury on attempted murder with deliberation and premeditation. (1CT 234 [CALCRIM No. 601].)

During closing argument, the prosecutor argued that appellants were guilty of the attempted murder of Bolden under two theories. First, there was evidence that Windfield was shooting at both Pride and Bolden. (4RT 864.) Second, the prosecutor argued that the evidence showed that in order to kill Pride, the primary target, appellants created a kill zone. Because

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[4] The transcript says "Trayvon" but the correct spelling is Travion. (1RT 73, 144.)

Bolden was within the "zone of fire," appellants were guilty of his attempted murder as well. (4RT 865.)

Neither appellant presented any evidence. In closing argument, appellant Canizales's attorney argued that Canizales believed he was participating in an assault, he did not know there was a gun, and he did not participate in the shootings. (4RT 875–876.) Appellant Windfield's counsel argued that Pride and Bolden were the shooters. (4RT 880.)

E. Appellants Were Convicted of the Murder of Cooksey and the Attempted Murders of Pride and Bolden

After the close of evidence, the trial court dismissed count 4, the section 12022.53, subdivision (c), allegation in count 1, and the section 12022.53, subdivision (b), allegation in counts 2 and 3. (2CT 262; Supp. CT 57; 3RT 782–783.) The jury convicted both appellants of the first-degree murder of Cooksey and the attempted, willful, and premeditated murders of Bolden and Pride. (2CT 278, 289.) It found all other enhancements true, except for the personal discharge of a firearm allegations as to appellant Canizales. (2CT 274–295, 305–306; Supp. CT 66–67.)

Appellants argued on appeal that the trial court erred by instructing the jury on the kill zone doctrine as applied to the attempted murder of Bolden. They asserted insufficient evidence supported such a theory as to the attempted murder of Bolden because appellants did not create a "kill zone." Canizales further argued that the court's instruction to the jury on the doctrine was incorrect and misleading.

In a partially-published decision, the Court of Appeal concluded that the jury was properly instructed on the "kill zone" theory of attempted murder.

This Court granted Canizales's petition for review, but deferred further action pending the finality of a disposition in *People v. Chiu*, S202724. Windfield's petition for review was denied.

After this court issued its opinion in *People v. Chiu* (2014) 59 Cal.4th 155, the matter was transferred to the Court of Appeal for reconsideration. In a partially-published decision issued September 10, 2014, the Court of Appeal reversed Canizales' conviction for first degree premeditated murder in count 1 because the court was unable to conclude beyond a reasonable doubt that the jury based its verdict of first degree murder on the legally valid theory that he aided and abetted premeditated and deliberate murder. The court affirmed both appellants' convictions for counts 2 and 3, again concluding that the jury was properly instructed on the "kill zone" theory of attempted murder.

On November 19, 2014, this Court granted Canizales's petition for review.

ARGUMENT

I. SUBSTANTIAL EVIDENCE SUPPORTED GIVING THE KILL ZONE INSTRUCTION

Appellants contend their convictions for the attempted premeditated murder of Bolden must be reversed because the evidence did not warrant an instruction on the kill zone. (Canizales BOM (CBOM) 12–23; Windfield BOM (WBOM) 10–19.) Substantial evidence supported the instruction, as the evidence established Windfield created a kill zone around Pride and that Bolden was in the zone when Winfield fired five shots.

A. Applicable Law

Attempted murder requires evidence of "the specific intent to kill and the commission of a direct but ineffectual act toward accomplishing the intended killing." (*People v. Perez* (2010) 50 Cal.4th 222, 229–230

(*Perez*).) Some basic rules have emerged particular to attempted murder, but not to murder. Attempted murder requires express malice or the specific intent to kill; murder, which can be predicated upon a finding of implied malice, does not. (*People v. Stone* (2009) 46 Cal.4th 131, 139–140 (*Stone*); *People v. Smith* (2005) 37 Cal.4th 733, 739 (*Smith*).) Where a person intends to kill one victim, but in the process kills another, the person is still liable for murder under the doctrine of transferred intent. (*People v. Shabazz* (2006) 38 Cal.4th 55, 62.) This doctrine is inapplicable to attempted murder. (*Bland, supra,* 28 Cal.4th at pp. 326–329.) As this Court has put it:

> Someone who in truth does not intend to kill a person is not guilty of that person's attempted murder even if the crime would have been murder—due to transferred intent—if the person were killed. To be guilty of attempted murder, the defendant must intend to kill the alleged victim, not someone else. The defendant's mental state must be examined as to each alleged attempted murder victim. Someone who intends to kill only one person and attempts unsuccessfully to do so, is guilty of the attempted murder of the intended victim, but not of others.

(*Id.* at p. 328.)

Similarly, "[j]ust as acts with implied malice constitute murder of anyone actually killed, but not attempted murder of others, so, too, acts with the intent to kill one person constitute murder of anyone actually killed, but not attempted murder of others." (*Bland, supra,* 28 Cal.4th at p. 329.) However, it does not follow that a defendant who targets one person is relieved of attempted murder liability for surviving victims of a deadly assault: "the person might still be guilty of attempted murder of everyone in the group, although not on a transferred intent theory." (*Ibid.*)

This Court has explained that "if a person targets one particular person, under some facts a jury could find the person *also*, concurrently, intended to kill—and thus was guilty of the attempted murder of—other,

nontargeted persons." (*Stone, supra,* 46 Cal.4th at p. 137, discussing *Bland, supra,* 28 Cal.4th at p. 329.) Those kill zone cases involve not a transfer of the intent to kill from an intended victim to an unintended victim, but a concurrent intent to kill all of the persons within the kill zone. (*Bland,* at p. 329.) A concurrent intent to kill is shown "'when the nature and scope of the attack, while directed at a primary victim, are such that we can conclude the perpetrator intended to ensure harm to the primary victim by harming everyone in that victim's vicinity.'" (*Id.* at pp. 329–330, quoting *Ford v. State* (1993) 330 Md. 682 [625 A.2d 984, 1000–1001].) *Bland* provided examples of situations demonstrating concurrent intent to kill, including "an assailant who places a bomb on a commercial airplane," or "a defendant who intends to kill A and, in order to ensure A's death, drives by a group consisting of A, B, and C, and attacks the group with automatic weapon fire or an explosive device devastating enough to kill everyone in the group." (*Bland,* at pp. 329–330.) In these situations, the "trier of fact may *reasonably infer* from the method employed an intent to kill others concurrent with the intent to kill the primary victim. When the defendant escalated his mode of attack from a single bullet aimed at A's head to a hail of bullets or an explosive device, the factfinder can *infer* that, whether or not the defendant succeeded in killing A, the defendant concurrently intended to kill everyone in A's immediate vicinity to ensure A's death." (*Id.* at p. 330, italics added.)

In *Bland*, the defendant and a companion fired handguns at a fleeing vehicle. (*Bland, supra,* 28 Cal.4th at p. 318.) The driver died and the two passengers, who received gunshot wounds, survived. (*Ibid.*) This Court held that the jury could reasonably have found a concurrent intent to kill all of the car's occupants when the defendant and his companion fired "a flurry of bullets at the fleeing car and thereby created a kill zone." (*Id.* at pp.

330–331.) "Such a finding fully supports attempted murder convictions as to the passengers." (*Id.* at p. 331, fn. omitted.)

Subsequent Supreme Court decisions have expounded on the boundaries of the kill zone theory. (See *Stone, supra,* 46 Cal.4th at pp. 136–138; *Smith, supra,* 37 Cal.4th at pp. 745–746.) In *Stone*, the defendant was charged and convicted of a single count of attempted murder after firing one shot into a crowd of people with the intent to kill any one person, but not a specific identifiable victim. (*Stone,* at p. 139.) This Court explained that lack of a primary target does not foreclose application of kill zone theory. (*Ibid.* ["Although a primary target often exists and can be identified, one is not required."].) But this Court determined the kill zone theory "did not fit the charge or facts" because there was no showing that the defendant used a means to kill that would have led to the death of others in a zone, and the defendant was not charged with attempting to kill nontargeted persons. (*Id.* at p. 138.) Instead, this Court affirmed the conviction by finding a specific intent to kill one person without resort to kill zone theory. (*Id.* at pp. 140–141.)

Smith is in accord. In *Smith*, this Court upheld the defendant's conviction for two counts of attempted murder where he shot one bullet into a car and narrowly missed a mother and her baby who were within the line of fire. (*Smith, supra,* 37 Cal.4th at pp. 745–746.) Based on evidence of the defendant's animosity toward the mother and the baby's father, this Court concluded sufficient evidence supported a finding of his direct intent to kill both the mother and baby. A kill zone theory did not apply because there was no evidence the defendant intended to kill the mother by killing her and the baby with a single bullet. (*Id.* at pp. 746–747.) More recently, in *Perez, supra,* 50 Cal.4th 222, this Court held that the defendant did not create a kill zone by firing a single shot into a group of people with the intent to kill someone, but no particular target. (*Id.* at pp. 231–232.) In

each of these single-bullet cases, the defendants' chosen method of inflicting harm was not deliberately escalated to kill multiple people in a zone.

By contrast, this Court has recognized *People v. Vang* (2001) 87 Cal.App.4th 554 (*Vang*) as a classic a kill zone case. In *Vang,* the defendants were convicted of 11 counts of attempted murder for spraying bullets into two occupied houses with the goal of killing one primary target in each house. (See *Bland, supra,* 28 Cal.4th at p. 330.) The defendants did not know how many people were inside and could not see their victims, but this Court agreed it was reasonable to infer the defendants harbored a specific intent to kill all 11 people inside. (*Vang,* at pp. 558, 563–564.) The *Vang* court explained, and this Court agreed: "The jury drew a reasonable inference, in light of the placement of the shots, the number of shots, and the use of high-powered, wall-piercing weapons, that defendants harbored a specific intent to kill every living being within the residences they shot up."[5] (*Vang,* at pp. 563–564; *Bland,* at p. 330.)

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[5] Although this Court's decisions suggest that the kill zone theory is limited to situations in which the defendant employed sufficient means to kill everyone in the zone, this may be an overstatement. For instance, if an assailant fired 10 shots into a room intending to kill everyone inside, but unbeknownst to him there were 11 people in the room, it would be reasonable to infer his intent was to kill all 11 people. His intent is no different merely because he was one bullet shy of an ability to kill every person inside and it would be reasonable to infer he harbored express intent to kill the eleventh person who was "'present and in harm's way, but fortuitously [was] not killed.'" (*Bland, supra,* 28 Cal.4th at p. 330, quoting *Vang, supra,* 87 Cal.App.4th at pp. 563–564.) The number of possible attempted murder victims in this scenario should be a question for the jury to decide based on the facts of the case and not just the number of bullets. (*Bland,* at p. 331, fn. 6; *Perez, supra,* 50 Cal.4th at 230–231 [evidence of a specific intent to kill multiple people with a single shot or evidence the defendant was thwarted from killing everyone]; *People v. McCloud* (2012) 211 Cal.App.4th 788, 806 (*McCloud*) [no evidence defendants intended to
(continued...)

Both appellants mistakenly rely on the Second District case of *People v. McCloud, supra,* 211 Cal.App.4th 788, as support for their argument that the Court of Appeal erred. In *McCloud,* two people were killed after the defendants fired 10 shots from a handgun into a building where over 400 people were having a party. (*Id.* at pp. 790–791.) The prosecutor argued that the 46 named victims of attempted murder were grouped into three kill zones: one around each murder victim and one in the parking lot near a car struck by two bullets. (*Id.* at p. 801.) The prosecutor argued that "anyone who could have potentially been hit" was a victim of attempted murder. (*Ibid.*) The trial court instructed on kill zone theory using CALJIC No. 8.66.1.[6] (*Id.* at p. 802, fn. 7.) The court reversed all 46 counts of attempted murder, holding that insufficient evidence supported instruction on kill zone theory. (*Id.* at p. 802.) At most, the court held evidence supported eight attempted murder convictions. (*Id.* at p. 807.)

McCloud held it was unreasonable to infer that a kill zone was created because there was no articulable kill zone. (*McCloud, supra,* 211 Cal.App.4th at pp. 801–802, 806.) Although it mistakenly held that kill zone theory requires a primary target (see *Stone, supra,* 46 Cal.4th at p. 140), the court correctly held that without a primary target or other

(...continued)
kill two or more persons per bullet fired].) However, this Court need not decide this issue in order to resolve the present case, where the appellants fired more than enough shots to kill everyone in the zone.

[6] CALJIC No. 8.66.1 states: "A person who primarily intends to kill one person, may also concurrently intend to kill other persons within a particular zone of risk. [This zone of risk is termed the 'kill zone.'] The intent is concurrent when the nature and scope of the attack, while directed at a primary victim, are such that it is reasonable to infer the perpetrator intended to kill the primary victim by killing everyone in that victim's vicinity. [¶] Whether a perpetrator intended to kill the victim, either as a primary target or as someone within a ['kill zone'] [zone of risk] is an issue to be decided by you."

evidence to assist the jury in defining the parameters of a kill zone, it was improper to infer a kill zone was created in that case. (*McCloud,* at pp. 801–802.) Without a primary target, the prosecutor argued that three separate kill zones were created based on wherever the bullets happened to land. Critically, that argument did not focus on the defendants' intent to kill; instead, it assumed that individuals merely placed in danger could be attempted murder victims on the kill zone theory. (*Id.* at p. 802.) Under those facts as charged and argued, the defendants certainly intended to kill a person with each shot fired, and under *Perez* it was not necessary for the intended victims to be identified (*Perez, supra,* 50 Cal.4th at pp. 231–232), but it was not true that they harbored the intent or capability to kill 46 people with 10 shots. (*McCloud,* at pp. 799–800.) In reversing all the attempted murder counts the court did not suggest firing shots into a crowd could never support an inference of concurrent intent; instead, the record did not contain substantial evidence to support application of the theory in that case based on the manner in which the case had been argued. (*Id.* at p. 802.)

This case, unlike *McCloud*, presents no such difficulties because there was a primary target and sufficient means to kill everyone in a clearly defined zone. To the extent that Pride was the primary target, firing five bullets was sufficient means to kill the two men in the zone, Pride and Bolden. "Whatever difficulties exist in deciding how many attempted murders a would-be indiscriminate killer has committed do not exist here." (*People v. Stone, supra,* 46 Cal.4th at p. 140.) Thus, *McCloud* is distinguishable.

B. The Evidence Warranted a Kill Zone Instruction

A trial court must instruct on the general principles of law relevant to the issues raised by the evidence. (*People v. Avila* (2009) 46 Cal.4th 680, 704.) The court has a "duty to see to it that the jur[ors] are adequately

informed on the law governing all elements of the case submitted to them to an extent necessary to enable them to perform their function in conformity with the applicable law." (*People v. Sanchez* (1950) 35 Cal.2d 522, 528.) However, it also must "refrain from instructing on principles of law which not only are irrelevant to the issues raised by the evidence but also have the effect of confusing the jury or relieving it from making findings on relevant issues." (*People v. Alexander* (2010) 49 Cal.4th 846, 920–921, internal citation omitted.) "'It is an elementary principle of law that before a jury can be instructed that it may draw a particular inference, evidence must appear in the record which, if believed by the jury, will support the suggested inference [citation].' [Citation.]" (*Ibid.*, quoting *People v. Saddler* (1979) 24 Cal.3d 671, 681.)

1. Appellants created a kill zone around Pride

The evidence supported an inference that appellants created a kill zone around Pride, that they harbored a concurrent intent to kill everyone in the zone, and that Bolden was in the zone. (*Bland, supra,* 28 Cal.4th at pp. 329–330.) Specifically, the evidence showed an identifiable primary target and "a means likewise calculated to kill everyone fired upon." (*Perez, supra,* 50 Cal.4th at p. 232.) Appellants do not dispute that Pride was a primary target. (CBOM 19–20; WBOM 13.) To kill that target, Windfield fired five shots to ensure the death of Pride and the only other person standing in the kill zone, Bolden. Thus, substantial evidence supported a finding appellants created a kill zone.

In *Bland*, the facts "virtually compel[led]'" a kill zone inference. (*Bland, supra,* 28 Cal.4th at p. 330.) The defendant and a companion, both gang members, fired handguns at a fleeing vehicle, killing the driver, a rival gang member, and injuring two passengers. (*Id.* at p. 318.) This Court held that the jury could reasonably have found a concurrent intent to kill all of the car's occupants when the defendant and his companion fired "a flurry of

bullets" at the car. (*Id.* at pp. 330–331.) The facts in this case are, in relevant respects, analogous to the facts in *Bland.* Both involved gang violence and attempted murder of rival gang members. (See *id.* at p. 318; 1RT 207; 3RT 630–632.) Gangs notoriously retaliate with escalated violence, which is what the kill zone theory is meant to address. (*Bland,* at p. 330; 2RT 519.) Like in *Bland*, enough shots were fired to kill everyone in the zone. (1 CT 233; 3 RT 719, 722 [at least five shots fired at two people].)

Contrary to appellants' argument, nothing in *Bland* suggests that in order to create a "kill zone" there must be a perimeter with a discreet, tangible boundary, such as a car, airplane or house. (CBOM 16–19; WBOM 12–13.) It is the nature and scope of the attack that determines whether a kill zone is created. (*Bland, supra,* 28 Cal.4th at p. 329.) It occurs whenever the attack is directed at a primary victim but executed in such a fashion as "'to ensure harm to the primary victim by harming everyone in that victim's vicinity.'" (*Ibid.*, quoting *Ford v. State, supra,* 625 A.2d at pp. 1000–1001, fn. omitted.) Indeed, one of the examples of a kill zone provided by *Bland* involved a defendant firing at a group of people surrounded by no discernible boundary. (*Bland,* at p. 330 [defendant drives by A, B, and C—who are presumably standing outside—and attacks].) *Bland* also cites to an assailant planting a bomb on an airplane as an obvious example of creating a kill zone. (*Id.* at pp. 329–330.) However, if that assailant instead planted a bomb in an open marketplace, it would be just as reasonable to infer he created a kill zone to ensure the death of everyone in range of that bomb's blast. Despite the lack of a concrete boundary, there could be no dispute the assailant's intent to kill everyone within the bomb's blast would be the same as the assailant who placed a bomb on an airplane.

Here, the evidence showed—and the prosecutor argued at closing—a zone was created around Pride: "So there were times when [Bolden] told you that he was with [Pride], near [Pride], [in] close proximity to [Pride]. So they're both within the zone of fire, the range of bullets that are coming at them." (4RT 865.) The prosecutor charged two counts of attempted murder to account for the attempt on Pride and the one person who stood by him, Bolden. (Cf. *McCloud, supra,* 211 Cal.App.4th at pp. 799–800 [charged 46 counts of attempted murder based solely on victims' proximity to where bullets landed].) Appellants both wrongly claim any kill zone surrounded the whole block party in order to analogize this case to the facts of *McCloud.* (CBOM 15–16; WBOM 12–13, 15.) However, it was never asserted or argued that the kill zone encompassed more than two people, and there is no evidence to suggest the jury improperly concluded a zone was created around the entire block party.

Both appellants mistakenly rely on *People v. Anh-Tuan Dao Pham* (2011) 192 Cal.App.4th 552, 559 (*Pham*), to argue that firing bullets into a crowd cannot create a kill zone. (CBOM 23–24, 32–33; WBOM 14, 17.) In *Pham,* the defendant was charged and convicted of two counts of attempted murder. The defendant expressly admitted that he intended to kill two specific males when he repeatedly fired a gun at a group. (*Id.* at p. 555.) The defendant challenged his convictions since the two males were not present in the group at which the defendant shot. (*Id.* at pp. 560–561.) Rejecting this contention, the court held the attempted murders were complete when the defendant fired at a group where he believed the two males were. (*Ibid.*) *Pham* correctly indicated that firing a gun into a crowd, without more, does not support an inference of an intent to kill everyone in the crowd. (*Id.* at p. 559.) However, the court did not consider kill zone theory: "we need not determine whether there was sufficient evidence for the jury to find, based on the nature of the shooting, that

defendant intended to kill more people than just the two African–American teenagers he believed had damaged his mother's van." (*Id.* at p. 559.) Thus, the case is not relevant here where the evidence supported a finding appellants fired with an intent to kill both people in the zone.

Appellant Canizales also mistakenly suggests (CBOM 19, 34–35) that when Pride took off running, any kill zone was undone. As Bolden described it, Windfield yelled "bust" and started shooting "all at the same time." (1RT 213.) Like *Bland,* the evidence here supported a reasonable inference that Windfield fired five shots in quick succession calculated to ensure both Pride's and Bolden's deaths.

2. The shots fired at Pride supported an inference that appellants intended to kill everyone in the zone

Appellants also claim the attack was not committed by means sufficient to support an inference that appellants intended to kill all persons in Pride's vicinity, pointing out that appellants did not use an explosive device or automatic weapon fire. (CBOM 16–18; WBOM 12.) Appellants' arguments are based on their mistaken premise that the entire block party was the kill zone, rather than just the area immediately adjacent to Pride. The five shots were more than enough to kill Bolden and Pride, the only two people in the zone identified by the prosecutor and established by the evidence. (See 1RT 184–186, 190.) Also, those methods cited in *Bland* were only illustrative. (*Bland, supra*, 28 Cal.4th at pp. 329–330.) This Court recognized in *Bland* that when the defendant escalates his method of attack from a single bullet to the head of the intended target to a hail of bullets at the target and others close by, concurrent intent to kill can be inferred. (*Id.* at p. 330.)

Nothing in *Bland* or the other kill zone cases suggests an explosive device or a spray of automatic weapon fire are required methods for kill-

zone applicability. Rather, "each case of necessity must turn on its own facts." (*Smith, supra,* 37 Cal.4th at p. 745.) As pointed out above, except for the fact that Pride and Bolden were close together in the street rather than in a car, the facts are analogous to those in *Bland*, in which this Court said the inference of concurrent intent to kill was "virtually compel[led]." (*Bland, supra,* 28 Cal.4th at p. 330.)

Five bullets fired at a target can constitute a kill zone, as case law from this State and other jurisdictions illustrate. For example, in *People v. Gutierrez* (1993) 14 Cal.App.4th 1425, the court affirmed one count of murder and two counts of attempted murder where the gang member defendant fired five shots at close range into a group of three individuals believed to be rival gang members. (*Id.* at pp. 1436–1437 [not argued on a kill zone theory, but the court held that "appellant, by firing five shots at close range, hitting two victims and missing one, intended to kill all three"].) In *Harrison v. State* (2004) 382 Md. 477, the court concluded sufficient evidence of a kill zone was created when the defendant fired six shots at an intended target. (*Id.* at p. 480.) The attempted murder conviction was overturned in that case because there was not sufficient evidence the victim inhabited the zone. (*Id.* at p. 497.) In *Harvey v. State* (1996) 111 Md.App. 401, a Maryland court also determined that the unintended victim was in the "kill zone" when she was standing "in close proximity" to the intended victim, at whom four shots were fired. (*Id.* at pp. 405, 434–435.) In *Ford v. State,* the Maryland court retroactively applied the theory of concurrent intent to the facts of *State v. Wilson* (1988) 313 Md. 600, where the defendant and his brother fired "multiple bullets" from two handguns. (*Ford, supra,* 330 Md. at p. 718.) Three shots fired around a door gave rise to a permissible inference of a kill zone in *United States v. Willis* (1997) 46 M.J. 258, 261–262. In *Walls v. United States* (D.C. 2001) 773 A.2d 424, 434, evidence that the defendant fired "several

shots" permitted an inference that he created a "zone of danger." The District of Columbia also held that by "unloading multiple 'quick fire' shots" to hit the target, a defendant created a kill zone in *Hunt v. United States* (D.C. 1999) 729 A.2d 322, 326. That court also found, in *Ruffin v. United States* (D.C. 1994) 642 A.2d 1288, that the evidence permitted a finding of concurrent intent to kill everyone in the path of the 10 to 15 rounds, described as "a hail of bullets." (*Id.* at p. 1298.) These methods of attack are similar to Windfield's five shots at Pride.

Appellants' reliance on *Perez, supra,* 50 Cal.4th 222, as support for their claim that no kill zone was created is misplaced. (CBOM 23–24; WBOM 16–18.) In *Perez,* the defendant fired a single bullet from a car at a group of eight officers, wounding one officer but killing no one. (*Perez,* at p. 224.) There was no evidence the defendant knew or specifically targeted any particular person in the group he fired upon and no evidence he specifically intended to kill two or more persons with his single shot; it was conceded that the defendant did not have the apparent ability to kill all eight officers with a single shot. (*Id.* at pp. 230–231 & fn. 5.) The jury convicted him of eight counts of attempted murder. This Court reversed all but one conviction, holding that "where the shooter indiscriminately fires a single shot at a group of persons with specific intent to kill *someone,* but without targeting any particular individual or individuals, he is guilty of a single count of attempted murder." (*Id.* at p. 225.)

Perez is readily distinguishable. Here, there was evidence of a primary target, and appellants used a means of destruction that could easily have killed both victims. Again, the critical point is "the nature and scope of the attack." (*Perez, supra,* 50 Cal.4th at p. 232; see also *Stone, supra,* 46 Cal.4th 131; *People v. Leon* (2010) 181 Cal.App.4th 452, 465–466 [defendant, who fired one shot at a vehicle containing three people, killing one of them, was properly convicted of attempted murder of the surviving

occupant who was directly in the line of fire; had the defendant fired more than one shot or used a shotgun, kill zone theory may have supported the second attempted murder conviction].) In the context of these proceedings, unlike the single-shot situations in *Perez, Stone* and *Leon,* the evidence concerning the nature and scope of the attack supported an inference that appellants "intended to kill everyone within the kill zone." (1CT 233; 3RT 719, 722.)

3. Bolden was in the kill zone

The evidence also supported an inference that Bolden stood in the kill zone. Just before the shots were fired, Bolden and Pride stood together on Jackson Street. (1RT 186, 190.) Windfield fired the shots almost simultaneously, or within seconds. (1RT 213, 232, 246.) Bolden stood between Pride and Windfield as the first shots were fired. (1RT 200, 208, 212, 216.) When the shots were fired, Pride grabbed Bolden and they took off running together. (1RT 195–196, 216.) Therefore, substantial evidence supported a finding that Bolden was next to Pride when the shots were fired, and in the kill zone.

In arguing the evidence was insubstantial, appellant Canizales notes that in his police interview, Bolden said Pride was not next to him when the shooting started, and that once the shooting started they ran in different directions. (CBOM 19–20.) Windfield cites to testimony suggesting Pride was the only target of the shooting. (WBOM 34–35.) For instance, he picks out a statement by Pride stating he was being targeted due to "Husta Squad business," a statement by Bolden to police that Windfield was not shooting at him, and that Windfield purportedly mentioned a single target. (WBOM 34–35.) However, it was up to the jury to decide which testimony should be believed. (1CT 217 [CALCRIM No. 226 authorized jury to accept all, part or none of any witness's testimony and ignore those parts it found untrue].) Because the evidence could support application of the kill

zone theory, the trial court properly gave the instruction. (See *People v. Alexander, supra,* 49 Cal.4th at p. 921.)

In short, because there was substantial evidence from which the jury could infer that appellants created a kill zone, that appellants intended to kill everyone within the zone and that Bolden was in the zone, the trial court properly instructed the jury on the kill zone theory as found in CALCRIM No. 600.

II. THE COURT PROPERLY INSTRUCTED ON KILL ZONE THEORY BASED ON *PEOPLE V. BLAND*

Appellants alternatively argue the kill zone instruction was legally erroneous because it eliminated the requirement that there be a specific intent to kill each victim and it allowed the jury to convict appellants of the attempted murder of Bolden based on a finding of implied malice. (CBOM 26–32; WBOM 23–28.) They contend the instruction was confusing, argumentative, misleading and lessened the prosecution's burden of proof. (CBOM 32–36; WBOM 23–31.) Finally, they assert the instruction should never be given as a matter of judicial policy. (CBOM 44–45; WBOM 32.) These arguments are without merit. The instruction on attempted murder was a correct statement of the law. It made plain that the prosecution had to prove a specific intent to kill using clear and direct language, with no suggestion that an attempted murder conviction could stand based on a finding that the victims' lives were merely in danger. It was within the trial court's discretion to so advise the jury and it did not err.

A. The Instruction on Attempted Murder Was a Correct Statement of the Law

In resolving a claim that an instruction misstates the law, this Court must ascertain the relevant law and then determine the meaning of the instruction in that regard. (*People v. Kelly* (1992) 1 Cal.4th 495, 522.) The question is whether there is a "'reasonable likelihood'" the jury understood

the instruction in the manner a defendant suggests. (*Ibid.*, quoting *Estelle v. McGuire* (1991) 502 U.S. 62, 72.) When making this determination, courts consider the context of the entire proceedings, including the arguments of counsel. (*Boyde v. California* (1990) 494 U.S. 370, 378, 383.) Jurors are regarded as intelligent and capable of understanding and correlating all instructions and admonitions they were given. (*People v. Carey* (2007) 41 Cal.4th 109, 130.)

Appellants argue that the "kill zone" theory does not eliminate the requirement that there be a specific intent to kill each attempted murder victim. (CBOM 26–32; WBOM 23–28.) As the earlier discussion of the law establishes, they are correct. (*Bland, supra,* 28 Cal.4th 329–330.) They are mistaken, however, in their claim that the court's instructions did just that.

The trial court instructed the jury on attempted murder with CALCRIM No. 600, which states that the prosecution had to prove appellants took an ineffective step to kill, and *specifically intended to kill.* (See *ante*, p. 7; 1CT 233.) The court did not modify the instruction, but did include all of the optional bracketed phrases, including the following paragraph on the kill zone theory:

> A person may intend to kill a specific victim or victims and at the same time intend to kill everyone in a particular zone of harm or "kill zone." In order to convict a defendant of the attempted murder of Trayvon Bolden, the People must prove that the defendant not only intended to kill Denzell Pride but also either intended to kill Trayvon Bolden, or intended to kill everyone within the kill zone. If you have a reasonable doubt whether the defendant intended to kill Trayvon Bolden or intended to kill Denzell Pride by killing everyone in the kill zone, then you must find the defendant not guilty of the attempted murder.

(3RT 823 [CALCRIM No. 600].) The court also instructed the jury it had to find whether the attempted murders were committed with deliberation

and premeditation. (1CT 234 [CALCRIM No. 601].) Also relevant here, the court explained that to find appellants guilty of attempted murder and the allegation, the appellants must have "not only intentionally" committed the crime, but must have done so "with a specific intent and mental state." (1CT 218 [CALCRIM No. 252].)

Appellants assert that the instructions did not explain that a conviction based on kill zone theory requires a finding of specific intent. They argue that the jurors might have found there was a kill zone, and jump from that finding to a conclusion that the appellants were guilty of attempting to murder Bolden, without bothering to ask themselves whether Bolden was actually in the kill zone—in other words, whether he was actually a person appellants intended to kill when they created the kill zone. (CBOM 26–32; WBOM 24–28.)

Appellants mistakenly read the instructions out of context and in isolation. (*People v. Carey, supra,* 41 Cal.4th at p. 109 [jury instructions must be read as a whole].) Appellants' argument presumes the jury would ignore the initial requirement from CALCRIM No. 600 that "the People must prove that, 1. The defendant took a direct but ineffective step toward killing another person; and, 2., *the defendant intended to kill that person.*" (3RT 822, emphasis added.) Under this instruction, the jury could find appellants guilty of attempting to murder Bolden only if it found they intended to kill him. The kill zone paragraph in context merely established that appellants could intend to kill Bolden even if their underlying goal was simply to kill Pride—that is, even if they would not have sought independently to kill Bolden. Hence, "A person may intend to kill a particular victim or victims and at the same time intend to kill everyone in a particular zone of harm or 'kill zone'." (3RT 823 [CALCRIM No. 600].) Of course, the person in this theoretical kill zone was Bolden. Thus, the next sentence explains, "In order to convict a defendant of the attempted

murder of Trayvon *[sic]* Bolden, the People must prove that the defendant not only intended to kill Denzell Pride, but also intended to kill everyone [i.e., Bolden] within the kill zone." (*Ibid.*) This is a correct statement of the law. (*Bland, supra,* 28 Cal.4th at p. 330.) The last sentence of the paragraph simply restates the first paragraph in the negative and brings in the concept of reasonable doubt: "If you have a reasonable doubt whether the defendant intended to kill Trayvon *[sic]* Bolden or intended to kill Denzell Pride by killing everyone in the kill zone, then you must find the defendant not guilty of attempted murder." (3RT 824.)

The other instructions reiterated that attempted murder was a specific intent crime requiring an intent to kill. CALCRIM No. 252 explained that a conviction for attempted murder, and any finding that appellants acted with premeditation and deliberation, required proof that appellants specifically intended to commit the crime. (1CT 218.) The court instructed that if the jury were to convict Canizales on an aiding and abetting theory, it had to find that Canizales knew Windfield intended to commit the crime, and that Canizales "specifically intend[ed] to aid him in the commission of the crime. (1CT 228 [CALCRIM No. 401].) No reasonable juror would interpret the instructions, construed as a whole, as allowing the jury to find appellants guilty of the attempted murder of Bolden without finding appellants either specifically intended to kill him as a target in his own right or intended to kill him as a corollary to killing Pride.

B. The Court's Instruction on Kill Zone Theory Did Not Suggest a Conviction for Attempted Murder Could Be Sustained if Appellants Merely Endangered Bolden's Life

Appellants relatedly argue that the instruction on kill zone theory was confusing and misled the jury to believe appellants could be found guilty of the attempted murder of Bolden by subjecting him to danger or a risk of fatal injury. (CBOM 32–36; WBOM 32–36.) The test for reviewing a

confusing or misleading instruction is whether there is a reasonable likelihood the jury applied the instruction in a manner that violates the Constitution. (*People v. Ayala* (2000) 24 Cal. 4th 243, 289.) Here, there is no such likelihood as the instructions did not permit jurors to convict them for the attempted murder of Bolden on something less than express malice.

Express malice requires an intent to kill, whereas implied malice involves doing an act dangerous to human life but not necessarily intending that the act result in death. (*People v. Swain* (1996) 12 Cal.4th 593, 602–603.) Implied malice is characterized by circumstances showing no considerable provocation or an abandoned and malignant heart. (§ 188.)

The trial court properly advised the jury that attempted murder was a specific intent offense requiring express malice. The court first instructed the jury that murder, as charged in count 1, required malice aforethought and that malice could be express or implied. (1CT 231 [CALCRIM No. 500]) That instruction explained the jury could find a defendant acted with implied malice if the following four elements were met:

> 1. He intentionally committed an act;
>
> 2. The natural and probable consequences of the act were dangerous to human life;
>
> 3. At the time he acted, he knew his act was dangerous to human life; AND
>
> 4. He deliberately acted with conscious disregard for human life.

(1CT 231 [CALCRIM No. 520].)

By contrast, the jury was informed that attempted murder, as charged in counts 2 and 3, required taking a direct step toward killing and proof that appellants "intended to kill." (1CT 233 [CALCRIM No. 600].) The court explained that a direct step "indicates a definite and unambiguous intent to kill." (*Ibid.*) To explain the concept of a kill zone, the court instructed that a "person may intend to kill a specific victim . . . and at the same time

intend to kill everyone in a particular zone." (*Ibid.*) Additionally, CALCRIM No. 252 reiterated that a conviction on count 2 required proof of specific intent. (1CT 218.) There is no ambiguity in these instructions on the element of express malice being required for attempted murder.

No reasonable juror could have failed to understand that express malice was required to sustain a conviction for the attempted murder of Bolden. The attempted murder instruction repeatedly referred to the need for the People to prove an intent to kill Bolden and stated that the intent must have been definite and unambiguous. A comparison to the instruction for implied malice reveals no overlapping language. Specifically, the attempted murder instruction included no mention of language associated with implied malice, such as "conscious disregard for human life," risk of death, "depraved heart" or "natural and probable consequences." Consequently, there is no reasonable likelihood the jurors would have read an implied malice standard into the instructions they were given.

Furthermore, the prosecutor's argument cleared up any possible ambiguities. (See *Middleton v. McNeil* (2004) 541 U.S. 433, 438.) The prosecutor argued that appellants were guilty of the attempted murder of Bolden because they specifically intended to kill him, a rival gang member, and shot at him: "Windfield shot at both of them." (4RT 864.) With regard to the kill zone instruction, she explained that if the jury found Pride was the primary target, then appellants were still guilty of the attempted murder of Bolden if he was within the kill zone:

> If they're shooting at someone and people are within the zone that they can get killed, then you're responsible for attempted murder as to the people who are within the zone of fire. Okay. So there were times when [Bolden] told you that he was with [Pride], near [Pride], close proximity to [Pride]. So they're both within the zone of fire, the range the bullets that are coming at them.

(4RT 865.) The prosecutor's argument accurately stated that people within the kill zone are victims of attempted murder. (*Perez, supra,* 50 Cal.4th at p. 232; cf. CBOM 49–50.) Although the prosecutor stated "can get killed," which could suggest liability for placing a person in danger, she immediately thereafter explained that "Attempted murder is attempted murder. Did they try to kill someone and—a human being, and they were unsuccessful in doing that. . ." (*Ibid.*) It is clear from the prosecutor's remarks that the malice required for the attempted murder of Bolden was the express intent to kill.

Use of the word "harm" in the last paragraph of CALCRIM No. 600 did not lessen the standard as appellant Windfield contends. (Cf. WBOM 25–26.) This Court noted in *Stone* that "[b]ecause the intent required for attempted murder is to kill rather than merely harm, it would be better for the instruction to use the word 'kill' consistently rather than the word 'harm.'" (*Stone*, *supra*, 46 Cal.4th at p. 138, fn. 3.) However, looking to the instructions as a whole, it is clear that the harm referred to "was the ultimate harm of death" and that the law required that the appellants intended to kill the victims. (*People v. Bragg* (2008) 161 Cal.App.4th 1385, 1395–1396.) Use of both "harm" and "kill," although perhaps imprecise, is consistent with *Bland.* (*Bland, supra,* 28 Cal.4th at p. 329.)

C. The Trial Court Was Not Required to Define the Term "Kill Zone"

Appellants further contend that the trial court violated their federal constitutional rights by not defining the term "kill zone" to the jury. (CBOM 37–39; WBOM 25–26.) This argument is without merit because, as this Court has already recognized, "kill zone" is a commonsense term.

"When a word or phrase is commonly understood by those familiar with the English language and is not used in a technical sense peculiar to the law, the court is not required to give an instruction as to its meaning in

the absence of a request." (*People v. Estrada* (1995) 11 Cal.4th 568, 574, internal quotes omitted.) "'A word or phrase having a technical, legal meaning requiring clarification by the court is one that has a definition that *differs* from its nonlegal meaning.' [Citations.]" (*People v. Cross* (2008) 45 Cal.4th 58, 67–68.) "'A defendant challenging an instruction as being subject to erroneous interpretation by the jury must demonstrate a reasonable likelihood that the jury understood the instruction in the way asserted by the defendant.' [Citations.]" (*Ibid.*) It is defendant's responsibility to request any clarifying or amplifying instructions necessary to supplement otherwise accurate instructions. (*People v. Estrada*, at p. 574.)

The court's instruction on attempted murder, taken directly from CALCRIM No. 600, told the jury that it could find appellants specifically intended to kill Bolden if appellants created a "kill zone" and Bolden was within it. Since neither appellant requested amplification as to the definition of that term, the trial court was not obligated to define it unless the phrase had a "technical sense peculiar to the law," that is, a "statutory definition differ[ing] from the meaning that might be ascribed to the same terms in common parlance." (*People v. Estrada, supra,* 11 Cal.4th at pp. 574–575.)

Nothing compels the conclusion that the term "kill zone" has a technical definition. *Bland*, which established the "kill zone" concept in California, defined "kill zone" as a zone in which the defendant intends to kill "everyone" to ensure harm to a target victim. As later explained in *Perez,* the term "kill zone" does not have a particular legal definition or numerical measure. (See *Perez, supra,* 50 Cal.4th at p. 232 [there is no set definition for "kill zone," which is "necessarily defined by the nature and scope of the attack" in any given case].) These descriptions are consistent with the commonsense definition.

In common parlance, the term "kill" means "cause the death of" or "to end the life of" a person. (www.Merriam-Webster.com/dictionary/kill.) The term "zone" means "an area that is different from other areas in a particular way." (www.Merriam-Webster.com/dictionary/zone.) Thus, commonly understood, the term "kill zone" means an area that is different from other areas because death will result to a person within it. Unless there is a different technical definition for the term "kill zone," appellants' claim must fail. (*People v. Estrada, supra,* 11 Cal.4th at pp. 574–575.)

The plain meaning of "kill zone" adequately conveys to the jury it must consider the nature and scope of the attack to decide the special area which would cause death to nontargeted victims. The jury did not express confusion or request a definition of "kill zone" apart from that provided in CALCRIM No. 600. For that reason, and because this Court has rejected the contention that "kill zone" has a specialized definition beyond its ordinary meaning (*Perez, supra,* 50 Cal.4th at p. 232), no further definition was required. Its meaning was adequately conveyed by the language and context provided in the CALCRIM No. 600 instruction.

Appellant Windfield suggests the instruction would be better if it "told the jury to consider first the nature and scope of the force the defendant used; then to determine whether, based on the nature and scope of the force used, it is reasonable to infer that the defendant had the intent to kill everyone in some articulable zone," before it considers whether the victim was in the zone. (WBOM 27–28.) This proposed instruction adds nothing to the pattern instruction. It is merely another way of stating what the instruction already says: if the appellants, in order to kill Pride, created a kill zone, and Bolden was in that zone, the jury could infer they specifically intended to kill Bolden. Defendants are not entitled to instructions that merely duplicate a point adequately covered by other instructions. Nor are they entitled to instructions in their own preferred

language rather than the standard instructions. (*People v. Catlin* (2001) 26 Cal.4th 81, 52, overruled on others grounds in *People v. Nelson* (2008) 43 Cal.4th 1242.)

Appellant Canizales asserts the instruction should have included the examples from *McCloud* of when the kill zone theory does not apply. (CBOM 36, citing *McCloud, supra,* 211 Cal.App.4th at p. 798 [kill zone does not apply if nontargeted victims are merely at risk, or if the defendant harbored implied malice].) A defendant is only entitled to jury instructions that pinpoint his theory of the case upon request. (*People v. Saille* (1991) 54 Cal.3d 1103, 1119.) Even had he requested it, the court had no obligation to give a requested pinpoint instruction that merely duplicated other instructions already being given. (*People v. Coffman* (2004) 34 Cal.4th 1, 99.) The last statement of the kill zone paragraph in CALCRIM No. 600 stated that if the jury possessed a reasonable doubt that appellants intended to kill Pride by killing everyone in a zone, then they had to find appellants not guilty. The examples from *McCloud* illustrate that standard of reasonable doubt and therefore no such modification was warranted.

Appellant Canizales attempts to argue CALCRIM No. 600 was confusing by discussing potential problems with a former version of the instruction, CALJIC No. 8.66.1 (see *ante*, p. 14, fn. 6), which was not given here. (CBOM 38.) But the two instructions are different.[7] For example, CALJIC No. 8.66.1 includes phrases not found in CALCRIM No. 600, including "zone of risk" and "concurrent intent." These differences, and the fact that CALJIC No. 8.66.1 is not before this Court, demonstrate that an analysis of CALJIC No. 8.66.1 is not relevant or applicable here.

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[7] Appellant Canizales relies on *People v. Sek* for this argument, but this Court granted review in that case on July 22, 2015, and it is no longer citable. (Case No. S226721)

Because CALCRIM No. 600 directly tracks the language of *Bland* and *Stone*, it is proper.

D. The Term "Kill Zone" Is Not Argumentative

Appellant Canizales also argues that use of the phrase "kill zone" was argumentative. (CBOM 39–44.) As explained by the Second District in *People v. Campos* (2007) 156 Cal.App.4th 1228, it is not. A jury instruction is argumentative when it is of such a character so as to invite the jury to draw inferences favorable to one of the parties from specified items of evidence. (*People v. Lewis* (2001) 26 Cal.4th 334, 380; *People v. Campos,* at p. 1244.) An instruction is also argumentative when it recites facts drawn from the evidence in such a manner as to constitute argument to the jury in the guise of a statement of law. (*People v. Campos,* at p. 1244.)

The term "kill zone" has been referred to and developed by this Court since it was initially coined in *Bland.* (*Stone, supra,* 46 Cal.4th at pp. 137–140; *Smith, supra,* 37 Cal.4th at pp. 745–746; *Bland, supra,* 28 Cal.4th at pp. 329–331.) Although the term "kill zone" is not required in any jury instructions (see *Bland,* at p. 331, fn. 6; *Stone,* at pp. 137–138), it properly describes the area surrounding a specific victim, particularly since the instruction requires that the defendant have an intent to kill every person within the "kill zone" in order to be found guilty of their attempted murders. The instruction does not invite inferences favorable to either party and does not integrate facts of this case as an argument to the jury. (*People v. Campos, supra*, 156 Cal.App.4th at p. 1244.) The term "kill zone" is no different from "[o]ther disparaging terms, including 'flight' (CALJIC No. 2.52), 'suppress[ion] of evidence' (CALJIC No. 2.06) and 'consciousness of guilt' (CALJIC No. 2.03) [that] have been used in approved, longstanding CALJIC instructions." (*Ibid.*) It merely indicates an area surrounding an intended target that contains those whom a

defendant concurrently intended to kill. The term does not pose a threat of prejudicing the jurors against appellant. It is a neutral description of a reasonable inference that can be made based on certain facts. If anything, the term emphasizes the requirement of an intent to kill in a way that "zone of harm" or "zone of danger" do not. (Cf. CBOM 41–43.) In any event, that other phrases might convey the same requirement does not mean "kill zone" is improper or inflammatory.

In short, the jury was merely given the option of considering whether a "kill zone" had been created; it was not instructed that a "kill zone" had been created. It is not reasonably possible that it caused the jury to be biased against appellants.

E. Instruction on Kill Zone Theory Is Appropriate When a Defendant's Intent to Kill a Nontargeted Victim is Contested

Appellant Windfield argues that instruction on the kill zone theory should never be given as a matter of judicial policy because such an instruction is unnecessary when the evidence supports it and misleading when the evidence does not. (WBOM 32–33.) Canizales similarly argues that a kill zone instruction is never required because it is not a legal doctrine, it is simply an inference the jury can make, and instructing the jury on the kill zone in this case lowered the prosecution's burden of proof. (CBOM 44–45). These arguments fail because a finding of concurrent intent based on the creation of a kill zone is simply a reasonable inference to be drawn based on a commonsense application of the evidence. Because the kill zone instruction was supported by the evidence in this case, there was no reason not to give it.

This Court has made it clear that the kill zone theory "is not a legal doctrine requiring special jury instructions . . . . Rather, it is simply a reasonable inference the jury may draw in a given case: a primary intent to

kill a specific target does not rule out a concurrent intent to kill others." (*Smith, supra*, 37 Cal.4th at p. 746, quoting *Bland, supra,* 28 Cal.4th at p. 331, fn. 6.) Appellants' arguments fail to take into account the difference between a presumption and an inference. A presumption under Evidence Code section 600, subdivision (a), is "an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action." In contrast, an inference "is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action." (Evid. Code, § 600, subd. (b); see *People v. McCall* (2004) 32 Cal.4th 175, 182–183.) The difference between a presumption and an inference is that, in the case of a presumption, the law compels the inference. (*People v. McCall*, at p. 182.)

The language of CALCRIM No. 600 addressing kill zone theory is an inference, not a presumption. (See *People v. Parson* (2008) 44 Cal.4th 332, 355–356 [it is proper to instruct the jury it may draw a permissive inference from a defendant's possession of recently stolen property that he is guilty of robbery].) CALCRIM No. 600 told the jury the prosecution had to prove appellants "not only" intended to kill Pride, but also intended to kill everyone within the kill zone. It also said that if the jurors had a reasonable doubt as to whether appellants "intended to kill Denzell Pride by killing everyone in the kill zone, then you must find the defendant[s] not guilty of the attempted murder [of Bolden]." (1CT 233.) In other words, the jury was told it may or may not draw the permissive inference. "The instruction [did] not create a mandatory presumption that operate[d] to shift the People's burden of proof to the defense, for the instruction merely permit[ted], but clearly [did] not require, the jury to draw the inference described therein. [Citations.]" (*People v. Parson,* at p. 355; *Vang, supra,* 87 Cal.App.4th at pp. 563–564.)

A permissive inference violates the due process clause only if the suggested conclusion is not one that reason and common sense justify in light of the proven facts before the jury. (*Francis v. Franklin* (1985) 471 U.S. 307, 314–315.) The conclusion suggested by CALCRIM No. 600 is a rational one. (*Bland, supra,* 28 Cal.4th at p. 331, fn. 6.) For attempted-murder crimes, where there exists evidence of an intent to create a kill zone to ensure the death of the primary target, CALCRIM No. 600 appropriately permits the jury to make an inference regarding the intent of the defendant to kill other people in the zone. (*Id.* at p. 330.)

There was nothing in the instruction that directly or indirectly addressed the burden of proof, and nothing in it that relieved the prosecution of its burden to establish guilt beyond a reasonable doubt. (*People v. Parson, supra,* 44 Cal.4th at p. 356.) Accordingly, because intent was contested and the evidence supported instruction on the creation of the kill zone, it was appropriate for the court to instruct on kill zone theory and tell the jury it could draw a permissive inference that appellants concurrently intended to kill Bolden if the evidence warranted it. Appellants' due process rights were not affected.

This Court has considered the kill zone theory numerous times since *Bland* and never concluded that separate instruction on concurrent intent should *not* be given when substantial evidence was presented to support it. In *Stone*, this Court noted two ambiguities in CALCRIM No. 600 and suggested ways to improve the instruction: (1) change the word "anyone" to "everyone," and (2) change the final sentence so it refers to an intent to harm *everyone* instead of *anyone*. (*Stone, supra,* 46 Cal.4th at p. 138, fn. 3.) If the intention was to stop or prohibit the use of instruction on kill zone theory, this Court would not have proposed improvements. Notably, both the suggested changes were given in the present case.

Appellants incorrectly interpret this Court's statement in *Bland, supra,* 28 Cal.4th at p. 331, fn. 6, that special instructions are *not required* as meaning the instruction is *unnecessary*. (CBOM 44–45; WBOM 32–33.) These terms are not synonymous. The passage from *Bland* is not properly understood as prohibiting separate instruction on concurrent intent; rather, it makes instruction on this point discretionary. Because the evidence presented at trial provided support for the jury to make the logical connection that the inference permitted, it was appropriate for the court to so instruct. (*County Court of Ulster County, N.Y. v. Allen* (1979) 442 U.S. 140, 157 [instruction on a permissive inference violates due process only when "there is no rational way the trier could make the connection permitted by the inference"].)

III. Any Possible Error Was Harmless

Even if the court erred by instructing on the kill zone theory when it was not supported by substantial evidence, any error was harmless. (See *Stone, supra,* 46 Cal.4th at pp. 138–139 [error in giving kill zone theory instruction which did not fit facts of case not necessarily prejudicial].) "It is error to give an instruction which, while correctly stating a principle of law, has no application to facts of the case." (*People v. Guiton* (1993) 4 Cal.4th 1116, 1129.) Such an error is reviewed under the standard articulated in *People v. Watson* (1956) 46 Cal.2d 818, 836–837. (*Guiton,* at p. 1130; *People v. Whisenhunt* (2008) 44 Cal.4th 174, 214.) "[G]iving an irrelevant or inapplicable instruction is generally '"only a technical error which does not constitute ground for reversal."' [Citation.]" (*People v. Cross, supra,* 45 Cal.4th at p. 67.) To determine prejudice, the court reviews the entire record, "including the facts and the instructions, the arguments of counsel, any communications from the jury during deliberations, and the entire verdict." (*Guiton,* at p. 1130.) "[I]nstruction on an unsupported theory is prejudicial only if that theory became the sole

basis of the verdict of guilt; if the jury based its verdict on the valid ground, or on both the valid and the invalid ground, there would be no prejudice, for there would be a valid basis for the verdict. . . . [T]he appellate court should affirm the judgment unless a review of the entire record affirmatively demonstrates a reasonable probability that the jury in fact found the defendant guilty solely on the unsupported theory." (*Ibid.*; accord, *People v. Perez* (2005) 35 Cal.4th 1219, 1233.)

Here, the prosecutor argued appellants were guilty of the attempted murder of Bolden under a traditional theory of attempted murder and under a kill zone theory. (4RT 864–865; cf. *People v. McCloud, supra,* 211 Cal.App.4th at pp. 801–802.) The jury's true finding that appellants acted willfully, deliberately and with premeditation in attempting to murder Bolden establishes that it necessarily determined appellants acted with a specific intent to kill. (2CT 27, 289.) To make that finding the jury had to find appellants "intended to kill when [they] acted," "carefully weighed the considerations for and against [their] choice and, knowing the consequences, decided to kill," and "decided to kill before completing the act[s] of attempted murder." (1CT 234.) "[O]nce a defendant intends to kill, any malice he may harbor is necessarily express malice. Implied malice . . . cannot coexist with a specific intent to kill." (*People v. Murtishaw* (1981) 29 Cal.3d 733, 764–765; *People v. Catlin* (2001) 26 Cal.4th 81, 151.) Hence, there is no doubt the jury found appellants specifically intended to kill Bolden.

In arguing to the contrary, appellants claim there was no evidence to support a determination appellants intended to kill Bolden. (CBOM 47, 49; WBOM 34–35.) In fact, considerable evidence supported appellants' convictions under the theory that they specifically intended to kill Bolden. The evidence demonstrated motive and planning on the part of both gang member appellants which showed their intent to kill rival gang members

Bolden and Pride. (*Smith, supra,* 37 Cal.4th at p. 742 [evidence of motive is probative proof of an intent to kill].) Specifically, appellants sought retaliation because a Hustla Squad gang member killed a member of Ramona Blocc. (2RT 517; 3RT 630–632.) Detective Marquez opined that Ramona Blocc members would be expected to retaliate for the death of a member using increased violence against the offending gang. (2RT 519.) Shooting two Hustla Squad members would provide that expected increase in violence, regardless of whether either victim had been the shooter of the Ramona Blocc member.

Just before the shooting, appellant Canizales engaged in a heated exchange with Bolden and they almost fought. (3RT 727.) Minutes later, Canizales summoned Windfield, the "Hustla Squad Killa." (2RT 422–426, 522.) Seeking out a reputed killer of the Hustla Squad gang immediately after fighting with Bolden demonstrated a singular intent to kill. Once the killer and back-up arrived, appellants confidently proceeded to their rivals' location while yelling, "Ramona Blocc!" and throwing gang signs. (2RT 422–426, 430.) Given a hypothetical based on the facts of the present case, Detective Marquez opined the shooting would have been for the benefit of Ramona Blocc. (3RT 682.) Based on these facts, it was reasonable for the jury to conclude that appellants intended to kill Bolden because he fought with Canizales, was a member of their rival gang and was friends with Pride. Even if Pride was the original target, Ramona Blocc's status would increase with each additional murder of a rival gang member.[8]

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[8] To the extent appellant Canizales is arguing insufficient evidence supported the verdict (CBOM 25), this issue was not raised in the Court of Appeal. Regardless, this discussion demonstrates the claim is meritless as there was ample evidence from which the jury could infer appellants were guilty of attempted murder under either the kill zone or traditional theory of attempted murder.

Moreover, the jury was properly instructed on the elements required to convict appellants of attempted murder using CALCRIM No. 600, as well as CALCRIM No. 251, which instructed that, in order to find appellants guilty of attempting to murder Bolden, "[h]e must not only intentionally commit the prohibited act, but must do so with a specific intent or mental state." (1CT 218, 233.) The court instructed the jury with CALCRIM No. 200, which explained that some instructions might be unnecessary. (1CT 211.) If the jury did not conclude the kill zone theory applied, the jury presumably ignored that portion of the instruction. (*People v. Benson* (1990) 52 Cal.3d 754, 793.) The fact that the jury asked for readback of Bolden's testimony in which he suggested the shooter was not shooting at him does not show it relied on kill zone theory as appellants contend (CBOM 50; WBOM 35). (2 CT 268.) Although it shows the jury discussed intent, the question gives no indication as to which theory the jury relied upon. Because there is not "an affirmative indication in the record" that the jury based its verdict on the kill zone theory, the error in instructing on the kill zone theory is harmless. (*Guiton, supra,* 4 Cal.4th at pp. 1128–1129.)

For these same reasons, even if this Court determines CALCRIM No. 600 to be an incorrect statement of the law, any possible error is likewise harmless. "[N]ot every ambiguity, inconsistency, or deficiency in a jury instruction rises to the level of a due process violation. The question is '"whether the ailing instruction . . . so infected the entire trial that the resulting conviction violates due process."' [Citations.]" (*Middleton v. McNeil, supra,* 541 U.S. at p. 437.) Instructional error with regard to permissive inferences is state law error evaluated under the test articulated in *People v. Watson, supra,* 46 Cal.2d at p. 836. (*People v. Gamache* (2010) 48 Cal.4th 347, 376; *People v. Parson, supra,* 44 Cal.4th at pp. 357–358.)

Appellants argue that the alleged error should be reviewed under the harmless-beyond-a-reasonable-doubt standard articulated in *Chapman v. California* (1967) 386 U.S. 18, because it resulted in erroneous instruction on the specific intent element of the offense. (CBOM 46–50; WBOM 33–36.) Respondent disagrees. At most, kill zone theory is an evidentiary inference that can be drawn to determine the specific intent; it is not itself an element.

In any event, the error was harmless under any standard. (See, e.g., *Neder v. United States* (1999) 527 U.S. 1, 15–16; *People v. Flood* (1998) 18 Cal.4th 470, 487.) As stated, by finding that appellants acted willfully, deliberately and with premeditation in attempting to murder Bolden (2CT 278, 289), the jury necessarily found appellants specifically intended to kill Bolden. (See *People v. Murtishaw, supra,* 29 Cal.3d at pp. 764–765.) Also, the evidence of appellants' intent to kill Bolden was overwhelming. Finally, the instructions as a whole cleared up any confusion. (1CT 233 [CALCRIM No. 600], 211 [CALCRIM No. 200, explaining that some instructions might be unnecessary], 218 [CALCRIM No. 252].) Appellants' rights were not implicated by inclusion of the legally correct but supposedly superfluous instruction. (*People v. Crew* (2003) 31 Cal.4th 822, 849 [superfluous instruction was harmless under state law]; *People v. Wallace* (2008) 44 Cal.4th 1032, 1076 [same].)

Appellants argue the error was not harmless because the prosecutor's argument improperly stated the law on kill zone theory. (CBOM 49; WBOM 28, 35.) As indicated previously, the prosecutor argued that appellants specifically intended to kill Bolden, a rival gang member, and shot directly at him. (4RT 864.) She also argued they were guilty under the kill zone theory, which required a specific intent to kill and evidence that Bolden stood within the zone for him to be a victim of attempted murder. In addition, the jury was instructed that the attorneys' remarks

were not evidence; and that if the attorneys' comments on the law conflicted with the court's instructions, then those comments should be ignored. (1CT 211 [CALCRIM No. 200], 214 [CALCRIM No. 222].) The jury is presumed to have followed the court's instructions. (*People v. Carey, supra,* 41 Cal.4th at p. 130.)

The prosecutor's argument did not suggest the jury could find appellants guilty of the attempted murder of Bolden *merely* because he was in the line of fire. (Cf. WBOM 28–29.) The totality of the evidence—which included Bolden being in the line of fire—showed that a kill zone was created and that Bolden was in it. Specifically, the prosecutor noted that Bolden and Pride were standing together before the shooting, that they fled together, and that Bolden stood so close to Pride that he was in the line of fire. (4RT 864–865.)

Appellant Canizales further contends that because he was not the shooter and he refused to take the gun from appellant Windfield, the jury likely would have found he did not intend to kill Bolden and did not share in any intent to kill that appellant Windfield may have had. (CBOM 22–23.) The jury's verdicts, as noted above, refute this assertion by finding both men guilty of deliberate and premeditated attempted murder of both victims. (2CT 278, 282, 289, 293.) Plus, the evidence demonstrated he was a full and active participant. A person aids and abets the commission of a crime when he has knowledge of the unlawful purpose of the perpetrator, and aids, promotes, encourages, or instigates the commission of a crime with the intent of committing the crime. (*People v. Cooper* (1991) 53 Cal.3d 1158, 1164.) As indicated, Canizales sent for the "Hustla Squad Killa" (2RT 522–523), he had motive to kill Bolden and there was no evidence that he conveyed to appellant Windfield he was no longer participating in the crimes, no evidence he attempted to prevent them, and

there was no evidence he withdrew from the plan. (1CT 228 [CALCRIM No. 401].) Any possible error in the instruction was harmless.

CONCLUSION

For the foregoing reasons, respondent respectfully asks this Court to affirm the judgment of the Court of Appeal.

Dated: September 14, 2015 Respectfully submitted,

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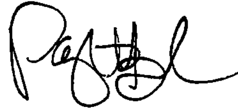
CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 13,380 words.

Dated: September 14, 2015

KAMALA D. HARRIS
Attorney General of California



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DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE

Case Name: **People v. Canizales, et al.**
No.: **S221958**

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 collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 14, 2015, I served the attached **ANSWER BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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The Honorable Michael A. Ramos
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Fourth Appellate District, Division Two
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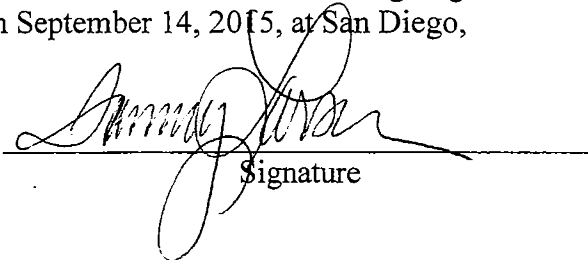
and furthermore, I declare in compliance with California Rules of Court, rules 2.251(i)(1) and 8.71(f)(1), I electronically served a copy of the above document on September 14, 2015, on Appellate Defenders, Inc.'s electronic service address eservice-criminal@adi-sandiego.com and on Appellant Michael Raphael Canizales's attorney Christine Vento and on Appellant Keandre Windfield's attorney David P. Lampkin via the registered electronic service addresses vento107660@gmail.com and dplampkin@aol.com by 5:00 p.m. on the close of business day. The Office of the Attorney General's electronic service address is ADIEService@doj.ca.gov.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 14, 2015, at San Diego, California.

Tammy Larson
Declarant



Signature

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