No. S165998 - CAPITAL CASE

In the Supreme Court of the State of California

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

v.

RONALD TRI TRAN,
Defendant and Appellant.

Orange County Superior Court, Case No. 01HF0193
Hon. William R. Froeberg, Judge

SECOND SUPPLEMENTAL RESPONDENT'S BRIEF

ROB BONTA (SBN 202668)
Attorney General of California
LANCE E. WINTERS (SBN 162357)
Chief Assistant Attorney General
JAMES WILLIAM BILDERBACK II (SBN 161306)
Senior Assistant Attorney General
HOLLY D. WILKENS (SBN 88835)
Supervising Deputy Attorney General
*CHRISTINE Y. FRIEDMAN (SBN 186560)
Deputy Attorney General
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9050
Fax: (619) 645-2012
Christine.Friedman@doj.ca.gov
Attorneys for Respondent

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INTRODUCTION

In an order filed on December 13, 2021, this Court ordered the parties to file supplemental briefing addressing the significance, if any, of Assembly Bill No. 333 (Stats. 2021, ch. 699) ("AB 333"), *People v. Valencia* (2021) 11 Cal.5th 818 (*Valencia*), and *People v. Navarro* (2021) 12 Cal.5th 285 (*Navarro*) to the issues presented in this case. In his 197-page Second Supplemental Brief, appellant Ronald Tri Tran ("Tran") addresses these issues and raises additional claims that (1) the penalty verdict should be reversed because the state introduced case-specific hearsay to undercut evidence of Tran's remorse; (2) the trial court prejudicially failed to fulfill its duty as a gatekeeper and exclude speculative opinion testimony from the prosecution's gang expert witnesses, and (3) Tran's death sentence is unconstitutional because his capital crime was committed when he was 20 years old.

Because of the changes in the law effected by AB 333 and the gang expert's reliance on case-specific hearsay in testifying about the predicate offenses, the true finding on the gang enhancement should be reversed. Tran's additional claims do not warrant relief, however, and the remainder of the judgment should be affirmed.

ARGUMENT

XVII. THE TRUE FINDING ON THE GANG ENHANCEMENT SHOULD BE REVERSED IN LIGHT OF AB 333[1]

Tran contends that the true finding on the gang enhancement must be reversed in light of AB 333's amendments to Penal Code section 186.22.[2] (Second Supp. AOB 21–51.) Respondent agrees. Applying the new law, the evidence presented at trial fell short of establishing that VFL (Viets for Life) was a "criminal street gang." Specifically, there was a lack of evidence that VFL members "collectively" engaged in a "pattern of criminal activity": the evidence did not establish that the predicate offenses were committed by two or more gang members or otherwise qualified as "collective" activity. Furthermore, no specific evidence was presented showing that the predicate offenses commonly benefitted the VFL in a way that was more than reputational. Accordingly, the true findings on the gang enhancement should be reversed.

A. AB 333 changes the requirements for imposing a gang enhancement

AB 333 amended section 186.22 in several ways. It modified the definitions of "pattern of criminal activity" and "criminal street gang," it clarified what is required to show an offense "benefit[s], promote[s], further[s], or assist[s]" a criminal street

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[1] Respondent continues the consecutive numbering of its arguments from Respondent's Brief and Respondent's Supplemental Brief. Respondent's numbering does not correspond to Tran's numbering of his arguments.

[2] Unless otherwise indicated, all further statutory references are to the Penal Code.

gang, and it added section 1109, which addresses bifurcation of gang participation and enhancements charges.

Under former section 186.22, subdivision (e), a "pattern of criminal gang activity" was defined as "the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of, two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter, and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons."

AB 333 modified this definition by requiring that: (1) the last offense used to show a pattern of criminal gang activity occurred within three years of the date that the currently charged offense is alleged to have been committed; (2) the offenses were committed on separate occasions or by two or more gang members, as opposed to persons; (3) the offenses commonly benefitted a criminal street gang, and the common benefit was more than reputational; and (4) the currently charged offense cannot be used to establish a pattern of gang activity. (Stats. 2021, ch. 699, § 3.) AB 333 also reduced the list of qualifying offenses that can be used to establish a pattern of gang activity from thirty-three to twenty-six. (*Ibid.*)

Under former section 186.22, subdivision (f), a "criminal street gang" was defined as "any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission

of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in, or have engaged in, a pattern of criminal gang activity." Subdivision (f) now defines a criminal street gang as "an ongoing, *organized* association or group of three or more persons, whether formal or informal," and requires that members of the gang "*collectively* engage in, or have engaged in a pattern of criminal gang activity" (rather than "individually or collectively"). (Stats. 2021, ch. 699, § 3, italics added.)

As amended, section 186.22, subdivision (g), now provides, "As used in this chapter, to benefit, promote, further, or assist means to provide a common benefit to members of a gang where the common benefit is more than reputational. Examples of a common benefit that are more than reputational may include, but are not limited to, financial gain or motivation, retaliation, targeting a perceived or actual gang rival, or intimidation or silencing of a potential current or previous witness or informant."

Finally, AB 333 added section 1109, which requires, if requested by defendant, a gang participation charge to be tried separately from all other counts that do not otherwise require gang evidence as an element of the crime. (Stats. 2021, ch. 699, § 5.) If the gang enhancements are bifurcated, the truth of the gang enhancement may be determined only after a trier of fact finds the defendant guilty of the underlying offense. (*Ibid.*)

The effective date of non-urgency legislation such as AB 333, passed in 2021 during the regular legislative session, was January 1, 2022. (Cal. Const., art. IV, § 8, subd. (c); Gov. Code, § 9600, subd. (a); see *People v. Camba* (1996) 50 Cal.App.4th 857, 865 ["Under the California Constitution, a statute enacted at a regular session of the Legislature generally becomes effective on January 1 of the year following its enactment except where the statute is passed as an urgency measure and becomes effective sooner"], internal quotation marks omitted.)

B. AB 333 applies retroactively

Respondent agrees that under *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*), AB 333's amendments to section 186.22 apply retroactively to judgments not final on appeal. In *Estrada*, the California Supreme Court held that, absent evidence to the contrary, the Legislature intended amendments to statutes that reduce the punishment for a particular crime to apply to all defendants whose judgments are not yet final on the amendments' operative date. (*Id*. at p. 745; *People v. Superior Court* (*Lara*) (2018) 4 Cal.5th 299, 306–308 [discussing *Estrada*].) Although AB 333 does not alter the punishment for the gang participation offense or the gang enhancement pursuant to section 186.22, *Estrada* applies because the amendments increase the threshold for conviction of the offense and imposition of the enhancement. (*People v. Delgado* (2022) 74 Cal.App.5th 1067 [2022 WL 405390, at p. *11] (*Delgado*); *People v. Lopez* (2021) 73 Cal.App.5th 327, 344 (*Lopez*) ["As Assembly Bill 333 increases the threshold for conviction of the section

186.22 offense and the imposition of the enhancement, we agree with [defendant] and the People that [defendant] is entitled to the benefit of this change in the law"].)[3]

C. The evidence presented at trial failed to establish that VFL members "collectively" engaged in a "pattern of criminal gang activity"

Because the trial in this case took place in 2007, the trial court did not instruct the jury on AB 333's changes to the law, including the requirements that gang members "collectively engage" in a pattern of criminal activity, that the predicate offenses were committed by gang members, and that the

[3] Respondent notes that section 1109, on its own, is prospective in nature. As discussed above, section 1109 gives defendants the ability to request that a gang enhancement be tried separately from the underlying offense, with defendant's guilt of the underlying offense being determined first and the question of the truth of the gang enhancement determined only after guilt of the underlying offense has been established. This change, which governs trial procedure and does not alter the substantive requirements of the gang enhancement, applies prospectively only. (See *People v. Cervantes* (2020) 55 Cal.App.5th 927, 940 [statutory amendments that imposed new requirements for interrogations, but did not "alter the substantive requirements for conviction, nor affect the available punishments in the event of conviction," were not retroactive under *Estrada*]; *id*. at p. 939 ["our high court has declined to extend the reach of *Estrada* to legislative action that does not alter or reduce criminal punishment or treatment for past criminal conduct."]; *People v. Sandee* (2017) 15 Cal.App.5th 294, 305, fn. 7 [statutory amendments relating to prohibition of governmental search of a cell phone not retroactive because amendments did not mitigate penalty for a crime, decriminalize conduct altogether, or expand defenses].)

predicate offenses provided a common benefit to the gang, which was more than reputational. "When jury instructions are deficient for omitting an element of an offense, they implicate the defendant's federal constitutional rights, and we review for harmless error under the strict standard of *Chapman v. California* (1967) 386 U.S. 18." (*People v. Sek* (2022) 74 Cal.App.5th 657, 668 [AB 333 essentially adds a new element to the gang enhancement, and jury instructions that are deficient for omitting elements are reviewed for harmless error under *Chapman*]; *Delgado*, *supra*, 2022 WL 405390, at *13 [AB 333 instructional error reviewed for harmless error under *Chapman*].)

Due to the lack of factual detail presented at trial regarding the predicate offenses, it is not possible to conclude beyond a reasonable doubt the jury imposed the gang enhancement on a now legally-valid ground under AB 333's amendments. The People relied on the following crimes as predicate offenses: (1) a 1992 residential burglary by Se Hoang; (2) a 1993 conspiracy to commit murder by Se Hoang;[4] (3) a 1994 attempted residential burglary by Phi Nguyen; (4) a 1994 residential robbery by Phi Nguyen; (5) a 1994 residential burglary by Phi Nguyen; and (6) a 1995 attempted murder by Anthony Johnson. (8 RT 1530–1534.) The gang expert, Mark Nye, testified that he reviewed records regarding these crimes. (8 RT 1529–1534.) In addition, certified

[4] As explained in Respondent's Brief, in 1995, section 186.22 did not refer to conspiracies to commit enumerated offenses. (RB 117.)

court documents establishing the convictions were introduced into evidence. (People's Exhs. 100, 101, 102, 103, 104.)

Based on the background and records of Se Hoang and Phi Nguyen, Nye concluded that they were members of VFL at the time of the aforementioned offenses. (8 RT 1531, 1533.) Nye assisted in investigating the 1995 attempted murder by Johnson and interviewed Johnson. (8 RT 1533.) According to Nye, Johnson—aka "White Boy"—was a member of VFL; he grew up with some VFL members and ended up becoming one of its leaders. (8 RT 1527–1529.)[5]

However, Nye did not testify about the factual circumstances of the predicate offenses. The court records include some facts, but do not establish whether the crimes were carried out with another gang member, whether the crimes were directed or coordinated by the gang, or how the crimes benefitted the gang.[6]

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[5] Tran's claim that Nye relied on case-specific hearsay in reaching his conclusions about the gang membership of Se Hoang, Phi Nguyen, and Anthony Johnson, is addressed in Section XVIII, *post*.

[6] Factual details contained within the record suggest, but do not prove, that some of the crimes may have been committed with another gang member for the benefit of the gang. For example, Phi Nguyen was charged with committing the 1994 attempted residential burglary with Quang Duc Nguyen. (1 Supp. CT 146.) Phi Nguyen pled guilty to this charge as well as a street terrorism charge. (1 Supp. CT 149.) A probation report indicated that Phi Nguyen "and two members of 'VFL' gang were involved in a planned residential burglary." (1 Supp. CT 160.) Subsequently, Phi Nguyen committed a residential robbery and a residential burglary with David Kenneth Nguyen. (1 Supp. CT 160, 176.) A probation document indicated that Phi Nguyen had

Accordingly, the instructional error cannot be deemed harmless beyond a reasonable doubt, and the gang enhancement should be vacated.

D. There was sufficient evidence the VFL was "an ongoing organized association or group" and the crimes committed by Tran provided a common benefit to the VFL

Tran makes additional claims that there was insufficient evidence that the VFL was "an ongoing, organized association or group" (Second Supp. AOB 34–36), and there was insufficient evidence that Tran intended to provide a common benefit to the VFL that was more than reputational (Second Supp. AOB 38–42). Although the Court need not reach these issues, respondent disagrees with Tran.

Under AB 333, a "criminal street gang" is "an ongoing, *organized* association or group of three or more persons, whether formal or informal . . . ." (Italics added.) Contrary to Tran's assertions, Nye's testimony established that the VFL was more than a social network of individuals. Nye had extensive experience working in the area of Vietnamese street gangs, and personally investigated crimes involving VFL gang members,

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violated the conditions of his probation by committing these crimes and continuing to be involved with and associating with VFL members. (1 Supp. CT 160.) Anthony Johnson was charged with four counts of attempted murder; he pled guilty to one count. (1 Supp. CT 208.) On his plea form, he wrote that he "aided and abetted Richard Rittenour and Truc Tran in an attempt to unlawfully kill another human being while vicariously armed with a tech 9 firearm. I did so on behalf of and for the benefit of a criminal street gang 'VFL' knowing such gang regularly engages in criminal activity." (1 Supp. CT 209.)

interviewed VFL gang members, and conducted search warrants on locations associated with members and affiliates of the VFL. (7 RT 1485.) He testified about the formation of the VFL gang, and opined that as of 1995, the VFL had 20 to 30 members, and the primary activities of the gang were home invasion robbery, residential burglary, murder, and attempted murder. (8 RT 1535.)

Based on Nye's testimony, the gang had an organizational structure and rules. Nye testified about a letter that Hong Lay (aka "Old Man"), one of the leaders of the VFL, wrote to Plata in 1993. (8 RT 1527.) In the letter, Hong Lay asked Plata to "jump" Homeless out of the gang. (8 RT 1539.) Nye believed that Plata had a high status in the gang because jumping someone out of the gang was a big responsibility. (8 RT 1541.) In another letter that Plata wrote to Tam, a VFL member who was killed in 1992, Plata expressed fear that Anthony Johnson was going to have him "jumped out" for ratting on him. (8 RT 1544.) Nye's testimony established that the VFL was an organized group.

As for whether Tran committed the murder of Linda Park for the common benefit of the VFL, Nye opined that the robbery, burglary, and murder were done at the direction of, for the benefit of, and in association with other members of the gang. (8 RT 1557.) Nye explained that proceeds from the crimes committed by gang members support the gang because the proceeds are shared with the people who are involved in the crime as well as with others back at the crash pad. (8 RT 1558.) Nye also explained that such violent crimes enhance the

reputation of the gang within the community. (8 RT 1557–1558.) Although Nye mentioned reputational benefit, the prosecutor did not place any emphasis on this when discussing the gang enhancement. (8 RT 1697–1699, 1740.)

Furthermore, there was ample evidence that the robbery and ensuing murder provided a common benefit to the gang. The crimes allowed Plata and Tran, two VFL gang members, to get away with stolen cash and jewelry and share the proceeds. Although there was no specific evidence that the proceeds were shared with other gang members, it can be reasonably inferred that they did so because that was how the gang operated. It does not appear that Plata and Tran went off on a lark and committed the crime without the gang's knowledge; according to prior statements by Linda Le, on the night of the murder, Plata was cleaning a knife and talking about the incident with Terry Tackett, a fellow gang member. (6 RT 1183–1184.)

Anyway, AB 333 provides as an example of a common benefit that is more that reputational, "silencing of a potential current or previous witness or informant." (Stats. 2021, ch. 699, § 3.) Here, the evidence suggested that Linda recognized Tran because Joann Nguyen, Tran's girlfriend and Linda's friend, had previously shown her a picture of him. (5 RT 1011.) After the murder, Tran told Joan that Linda was killed because he did not want her to identify him. (5 RT 1047.) In closing argument, the prosecutor argued that the minute Linda recognized Tran when she opened the front door, Plata and Tran were not going to let her live. (8 RT 1866.) Tran argues that there was no evidence

that the murder was committed with the intent to silence Linda because she was a witness against the *gang*. However, Plata and Tran were both gang members committing a primary activity of the gang. Linda's identification of Tran would lead to the identification of Plata and would have a negative impact on the gang.[7]

E. Remedy

Although remand would normally be the proper remedy (see (*Lopez, supra*, 73 Cal.App.5th at p. 373; accord *People v. Vasquez* (2022) 74 Cal.App.5th 1021 [2022 WL 387997, at *6]), if the remainder of the judgment is affirmed, respondent agrees that the gang enhancement should be vacated without remand.

XVIII. REVERSAL OF THE TRUE FINDING ON THE GANG ENHANCEMENT IS ALSO WARRANTED BECAUSE NYE RELIED ON CASE-SPECIFIC HEARSAY IN TESTIFYING ABOUT THE PREDICATE OFFENSES

In testifying about the predicate offenses, it appears that Nye related case-specific hearsay in concluding that Se Hoang and Phi Nguyen were VFL gang members. This error provides an additional ground for reversing the true finding on the gang enhancement.

In *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*), this Court held, "When an expert relies on hearsay to provide case-specific facts, considers the statements as true, and relates them

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[7] In addition, as previously argued by respondent, there was compelling evidence that the charged crimes were committed "in association with the VFL." (RB 122–126; Supp. RB 5–8.) Plata and Tran relied on their common gang membership and the apparatus of the gang in committing the charged crimes.

to the jury as a reliable basis for the expert's opinion, it cannot logically be asserted that the hearsay content is not offered for its truth. In such a case, 'the validity of [the expert's] opinion ultimately turn[s] on the truth' [citation] of the hearsay statement." (*Id*. at pp. 682–683.) *Sanchez* described case-specific facts as those "relating to the particular events and participants alleged to have been involved in the case being tried." (*Id*. at p. 676.)

In *Valencia*, *supra*, 11 Cal.5th at pp. 838–839, this Court clarified that facts necessary to prove predicate offenses are case-specific facts within the meaning of *Sanchez* and must be proven by independently admissible evidence. "Without independent admissible evidence of the particulars of the predicate offenses, the expert's hearsay testimony cannot be used to supply them. In the absence of any additional foundation, the facts of an individual case are not the kind of general information on which experts can be said to agree." (*Id*. at p. 838.)

As discussed in Section XVII.C, *ante*, to establish a pattern of criminal activity, Nye relied on predicate offenses committed by Se Hoang, Phi Nguyen, and Anthony Johnson. Nye testified that he reviewed a document indicating that Hoang admitted that he was a member of VFL at the time he committed the crimes at issue. (8 RT 1531.) Nye concluded that Phi Nguyen was a member of VFL at the time he committed the relevant crimes, based on Phi Nguyen's "background" and "record." (8 RT 1533.)

Respondent agrees that as to Se Hoang and Phi Nguyen, it appears that Nye relied on hearsay statements made in reports or other documents in concluding that they were VFL members. The gang membership of these individuals was not proven by other independently admissible evidence.[8]

In contrast, it seems that Nye's conclusion that Anthony Johnson was a VFL gang member was based on his own personal knowledge. *Sanchez* was concerned with an expert relating case-specific facts "about which the expert has no independent knowledge." (*Sanchez*, *supra*, 63 Cal.4th at p. 676.) Nye assisted in investigating the 1995 attempted murder by Johnson and personally interviewed Johnson. (8 RT 1533.) Accordingly, it does not appear that when testifying about Johnson's gang membership, Nye was simply "regurgitat[ing] information from another source." (*People v. Veamatahau* (2020) 9 Cal.5th 16, 205 (*Veamatahau*).)

To determine whether the *Sanchez* error with respect to Se Hoang and Phi Nguyen was harmless, the court must determine whether there was sufficient evidence to support a finding that the VFL satisfied the statutory requirements for a criminal street gang in the absence of Nye's testimony. (*Navarro*, *supra*, 12 Cal.5th at p. 957.) Viewing the *Sanchez* error in combination

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[8] In Hong Lay's 1993 letter to Plata, Lay directed Plata to talk to Phi Nguyen, because he knew where Homeless lived. (8 RT 1540.) Lay also told Plata to tell Se [Hoang] that Lay wanted Se to spend time with Plata so they could "be good homeboys." (8 RT 1539.) Although this letter suggests that Phi Nguyen and Se Hoang were VFL gang members, it does not definitively prove their gang membership.

with AB 333's changes to the definitions of "criminal street gang" and "pattern of criminal activity," including the new requirement that the currently charged offense cannot be used to establish a pattern of gang activity, the error was not harmless.

XIX. TO THE EXTENT THE STATE INTRODUCED CASE-SPECIFIC HEARSAY REGARDING TRAN AND PLATA'S GANG MEMBERSHIP, SUCH ERROR WAS HARMLESS; REVERSAL OF THE PENALTY VERDICT IS NOT WARRANTED

Tran argues that the state erroneously elicited non-testimonial and testimonial case-specific hearsay to prove that Plata and Tran were members of the VFL. (Second Supp. AOB 64–77.) Tran further argues that such error was not harmless and requires reversal of the penalty verdict. (Second Supp. AOB 72–77.) Although Nye relied on some hearsay in concluding that Plata and Tran were VFL members, he also relied on competent evidence. Moreover, any error in relating case-specific hearsay was harmless beyond a reasonable doubt given the compelling admissible evidence tying Tran and Plata to the VFL.

A. Evidence underlying the expert opinion that Tran was a VFL member

In forming his opinion that Tran was a VFL member, Nye considered the tattoos on his body, including: a map of Vietnam (consistent with other VFL members); the words "In loving memory of Viet" (a VFL member who died); the years that Tran was incarcerated; his nickname "Scrappy"; a "V" surrounded by rays; a Vietnamese saying that translates to "no good deed has been returned to my father and mother by me"; and a tattoo of Korean characters, which translated into English as "forgive." (8 RT 1548–1552; People's Exhs. 41, 44, 47, 106, 107, 108.)

Nye also considered a police contact in 1993, when Tran, who was with Se Hoang, initially gave a false name but subsequently admitted his name and that he was a member of VFL. (8 RT 1554.) Nye also considered eight to ten other contacts between law enforcement and Tran. (8 RT 1554.) In addition, Nye considered that Tran had a book in his house that contained handwriting that said things like "Scrappy," "VFL," "Fuck TRG,"[9] and the letters "TRG" crossed out. (8 RT 1555.)

Probation officer Timothy Todd testified that Tran's tattoo of Korean characters was a form of bragging. (6 RT 1157–1158.) Todd told the jury that he learned "as part of [his] involvement in the case" that Tran and Plata were members of VFL in 1995. (6 RT 1158.)

To the extent that Nye and Todd relied on police reports or other documentation such as FI cards to form their opinions that Tran was a member of VFL, they conveyed case-specific hearsay.[10] (*Sanchez*, *supra*, 63 Cal.4th at pp. 694–698.) However, the admission of case-specific facts asserted in hearsay statements is improper only if the facts are not otherwise independently proven by competent evidence. (*Id*. at p. 686.) Tran's gang membership was independently proven by other competent evidence.

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[9] TRG (Tiny Rascals Gang) was a rival gang of the VFL. (8 RT 1528.)

[10] Because it is unclear exactly what documents Nye and Todd were relying on, it cannot be determined whether the hearsay was testimonial or non-testimonial.

Nye properly relied on Tran's numerous tattoos in forming his opinion about Tran's gang membership. (Second Supp. AOB 70.) Although Tran does not dispute that Nye could base his opinion about Tran's VFL membership on his tattoos, Tran argues that Nye and Todd relied on inadmissible hearsay in testifying about the meaning of a couple of the tattoos.

In concluding that Tran's tattoo of Korean characters was a form of bragging about what he had done, Nye relied in part on the transcript of a taped conversation between Plata and Qui Ly, a confidential informant, during which Plata said that the tattoo actually meant, "blow me," or "suck me." (8 RT 1554.) Todd also referred to Plata's statement to Qui Ly when opining that the tattoo on Tran's neck was meant to project his pride about something that had occurred. (6 RT 1158.)

Tran argues that the transcript of Plata's statement to Qui Ly and the statement itself were testimonial and non-testimonial hearsay, respectively. Even if this is so, Nye and Todd only partially relied on this evidence in reaching their conclusions about the meaning of the tattoo. Nye and Todd also relied on their own experiences interacting with Asian gang members and seeing their various tattoos. Nye testified that it was his opinion that if it was known within Tran's gang that a Korean person was murdered, Tran would be taking credit for the murder by getting the tattoo. (8 RT 1553.) According to Nye, even if the tattoo said, "forgive," it would not be a genuine expression of remorse because remorse is a sign of weakness in gang culture, and Tran would not want to advertise weakness to other gang

members. (8 RT 1553.) Similarly, Todd testified that in his experience, tattoos are a way for gang members to brag about the things their gang has done.[11] (6 RT 1155.) Upon first seeing the tattoo, Todd felt that it was an attempt at projecting Tran's pride at something that had occurred, or at least noting his participation in an event. (6 RT 1157.)

Tran also takes issue with Nye's testimony about the meaning of his tattoo of the Vietnamese saying, "no good deed has been returned to my father and mother by me." (6 RT 1564.) Nye explained that based on the thousands of gang members he has talked to and the tattoos he has seen, the tattoo basically means that the individual has lost the love of his family and is willing to participate in the gang life and engage in criminal activity. (6 RT 1564–1565.)

Nye's testimony in this regard was completely proper. An expert may "testify about more generalized information, even if derived from hearsay, to help jurors understand the significance of [ ] case-specific facts. An expert is also allowed to give an opinion about what those facts may mean." (*Sanchez*, *supra*, 63 Cal.4th at p. 676.) Accordingly, if admissible evidence was introduced that a defendant had a diamond tattooed on his arm, a gang expert could properly testify that the diamond is a symbol adopted by a given street gang. (*Id*. at p. 677.) The expert could also opine that the presence of a diamond tattoo shows the person

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[11] Todd testified as the gang expert during the preliminary hearing. (4 Pretrial RT 589–643.) Through his work, he had substantial experience with Asian gangs and interacted with many Asian gang members. (6 RT 1148–1152.)

belongs to the gang. (*Ibid*.) Here, an authenticated photograph of Tran's tattoo was introduced into evidence (People's Exh. 107), and Nye could opine about the meaning of the tattoo based on background knowledge Nye obtained through his work and interactions with gang members. (See *Veamatahau*, *supra*, 9 Cal.5th at p. 28, fn. 3 [explaining that background information about a diamond being a symbol adopted by a given street gang is not case specific, "regardless of whether the expert learned of the symbol, as defendant puts it, by consulting a specific database, talking to a 'single gang member,' or by 'debrief[ing] seven members of the gang in question,' 'interview[ing] [an unspecific number] of rival gang members,' and attending 'gang seminars' "].)

Nye also properly relied on a text book containing handwriting that was found during the search of Tran's parent's home. (6 RT 1253; People's Exh. 56 – 1 Supp. CT 28–40.) The handwritten words included, "Ron," "Big Bad VFL Gang '93," "Fuck TRG," and "Scrappy." Given where the text book was found and the content of the handwriting, Tran does not argue that the handwriting could not be attributed to him.

B. Evidence underlying expert opinion that Plata was a VFL member

In reaching his opinion that Plata was a VFL gang member, Nye considered: (1) a police report regarding criminal activity Plata was involved in with Johnson in 1993 (according to the report, Plata told the police that Johnson was a member of the VFL and he was just an associate); (2) the 1993 letter from Hong Lay to Plata, asking him to "jump out" Homeless; (3) the letter

from Plata to Tam, a deceased VFL member, in which Plata expressed fear that Johnson was trying to get him "jumped out" and indicated he "would die for VFL and just about everyone in it"; (4) a field identification card showing that Plata and Tackett were contacted by Westminster police on July 7, 1996 (Plata admitted his membership in VFL during the contact); (5) a report where Plata admitted under oath that he was a member of VFL; (6) a statement by Plata's sister to the police that Plata was a member of VFL; (7) a statement by Samantha Le to the police that Plata always talked to her about being a member of the VFL; and (8) a statement to the police by Laura Nguyen that Plata had told her that he was a member of VFL. (8 RT 1538–1547.)

Again, to the extent that Nye relied on police reports, FI cards, and police statements to form his opinion regarding Plata's gang membership, Nye was relating case-specific hearsay. But Nye also based his opinion on other competent evidence in the record. The letter from Hong Lay to Plata, which asked Plata to jump Homeless out of the gang, showed that Hong Lay trusted Plata with gang business. Lay's request was not hearsay because it did not assert the truth of any fact. (*People v. Jurado* (2006) 38 Cal.4th 72, 117.)

The letter Plata wrote to Tam (People's Exh. 105 – 1 Supp.CT 213–216) was particularly damning. Nye testified that Tam was a VFL member who was killed in 1992. (8 RT 1543.) In the letter, dated December 18, 1993, Plata referred to Tam as his "homie." (1 CT 214.) Plata wrote that Anthony was trying to get

him jumped out of the gang for "ratting" on him. (1 CT 214.) Plata said he was sorry for what he had done and wished he could take it back. (1 CT 214.) He asked for Tam's help in getting the gang to change its mind about jumping Plata out. (1 CT 215.) He said twice that he would "die for VFL" and explained that he was afraid he would kill himself if he got jumped out of the gang. (1 CT 215.) He signed the letter, "Your homie for life." (1 CT 216.)

C. Any *Sanchez* error was harmless

Any error by Nye or Todd in relating case-specific hearsay regarding Plata and/or Tran's gang membership was harmless beyond a reasonable doubt. As detailed above, even though the experts relied on some case-specific hearsay in reaching their opinions that Plata and Tran were members of the VFL, Nye also relied on competent evidence. Furthermore, there was additional evidence presented at trial establishing that Plata and Tran were VFL members.

At trial, Linda Le testified that her boyfriend, Tackett, was a member of VFL as were Plata and Tran. (5 RT 1176, 1177.) Joann Nguyen testified that Tran told her that he was a member of VFL. (5 RT 1010.) During the search of the home of Kathy Nguyen, Tran's then girlfriend and mother of his son, the police found three-inch plaster letters that spelled "VFL" on the bedroom wall. (6 RT 1252.) At Tran's parent's home, the police found a letter from Plata to Tran, signed, "Your homie, Noel." (6 RT 1255.)

Considering this evidence and the admissible evidence considered by the experts, any error in permitting case-specific hearsay regarding Plata and Tran's gang membership was harmless beyond a reasonable doubt. The jury undoubtedly would have determined that Plata and Tran were VFL gang members with or without the case-specific hearsay.[12]

XX. THE INTRODUCTION OF ANY CASE-SPECIFIC HEARSAY REGARDING THE MEANING OF TRAN'S TATTOOS DOES NOT WARRANT REVERSAL OF THE PENALTY VERDICT

As discussed in Section XIX, *ante*, Tran claims that the experts related case-specific hearsay in testifying about the meaning of his tattoo of Korean characters and his tattoo of the Vietnamese saying. Tran now contends that because this hearsay undercut the defense theory that Tran was remorseful, reversal of the penalty verdict is required. (Second Supp. AOB 78–87.) To the contrary, the admission of any case-specific

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[12] Tran argues that the prosecutor relied heavily on Tran and Plata's gang membership in the penalty phase closing argument. (Second Supp. AOB 76–77.) Not so. Tran parses out the instances when the prosecutor mentioned gangs. However, the main focus of the prosecutor's argument was the torture Plata and Tran inflicted on Linda. At one point, the prosecutor told the jury that they could forget about everything else—the torture was enough to warrant the death penalty. (12 RT 2403.) The prosecutor started his argument by explaining that the defendants not only robbed the Park family, but they tried to rob Linda of her humanity and dignity. (12 RT 2363.) He ended his argument by asking the jury to imagine the suffering Linda went through in her last moments as she was tied up with a rope around her neck, had duct tape placed on her mouth, and had her throat cut twice. (12 RT 2435.)

hearsay regarding the meaning of Tran's tattoos was harmless beyond a reasonable doubt.

Regarding Nye's opinion as to the meaning of Tran's tattoo of the Vietnamese saying, Nye did not relate case-specific hearsay. As previously discussed (Section XIX.A, *ante*), Nye properly applied background information he had gathered from interacting with numerous Asian gang members, to the specific tattoo that Tran had. The case-specific fact of the existence of Tran's tattoo was established through admissible evidence.

As for Plata's statement to Qui Ly that Tran's tattoo of Korean characters meant "blow me" or "suck me," even if this constituted case-specific hearsay, Nye and Todd did not rely solely on this evidence in reaching their conclusions about the true meaning of Tran's tattoo. (See Section XIX.A, *ante*.) Both Nye and Todd also drew from their experience with Asian gangs and tattoos as a form of bragging. Nye also relied on his knowledge about remorse being seen as a sign of weakness within gang culture.

Because Todd and Nye also had valid bases for concluding that Tran's tattoo was not a true expression of remorse, the introduction of the evidence regarding Plata's statement to Qui Ly was harmless beyond a reasonable doubt. Furthermore, there was other compelling evidence that Tran lacked remorse for his crimes.

Tellingly, although the prosecutor addressed the topic of remorse in his closing argument at the penalty phase, the prosecutor did not make any mention of the "forgive" tattoo.

Instead, the prosecutor talked about how Tran's repeated criminal actions showed that he was not a remorseful person. The prosecutor pointed out that Tran had committed a string of residential burglaries and had only been out of prison for six months when he killed Linda. (12 RT 2380.)

The prosecutor also pointed to Tran's taped conversations with Qui Ly about the crimes. (12 RT 2385–2389.) During these conversations, Tran did not express sorrow or remorse for what he had done, but rather exhibited callousness and selfishness. When Ly asked Tran why he killed Linda, Tran replied, "I don't know what to say, man. Tie 'em up, you know. What can you do?" (1 SCT 73.) When Ly asked Tran if the crime was worth it, Tran replied that it was not but was supposed to be worth "about ten." (1 SCT 81.) As argued by the prosecutor, Tran "put a $10,000 price tag on what he did to Linda." (12 RT 2387.)

Based on the taped conversations, it appears that Tran's only regret was getting caught. Tran said that right after the crime he knew he "would get busted for this and I'll be the biggest fucking idiot in the world." (1 SCT 89.) But he took the risk and accepted his fate—"Co chai co chieu" ["You play, you pay and accept"]. (1 SCT 84.)

At one point, Tran even laughed on tape about the crimes. When Ly asked him if he had any of Linda's property at his house, Tran laughed and said, "Dude, come on now, it's all good, it's all good." (1 SCT 91.)

Tran's own words showed that he had a flippant attitude about the crimes and was not truly remorseful for torturing and

murdering Linda. Furthermore, whether Tran was remorseful or not, the fact remained that he and Plata tied up an eighteen-year-old girl, duct-taped her mouth, slashed her throat twice, and eventually strangled her to death. Linda suffered and died so that Plata and Tran could get away with some cash and jewelry. Any hearsay evidence about Tran's tattoos did not contribute to the death verdict.

XXI. THE TRIAL COURT DID NOT FAIL TO FULFILL ITS DUTY AS A GATEKEEPER TO EXCLUDE UNRELIABLE AND SPECULATIVE EXPERT OPINION TESTIMONY

Tran argues that the trial court failed to carry out its gatekeeping duties with respect to expert opinion testimony, as required by *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 769 (*Sargon*). (Second Supp. AOB 88–134.) According to Tran, Nye and Todd employed no reliable methodology or principles in opining that Tran and Plata were members of VFL, VFL was a criminal street gang, the murder was committed for the benefit of the VFL, and Tran's "forgive" tattoo was a form of bragging. Thus, Tran argues, his constitutional rights were violated, and the gang enhancement and death sentence should be reversed. Tran is wrong. The record reveals reliable bases for the expert opinions—i.e., the experts' extensive training and experience with respect to Asian gangs, including frequent interactions with Asian gang members (VFL members included), and the review of documents and reports regarding crimes committed by members of Asian gangs.

Evidence Code section 801 provides: "If a witness is testifying as an expert, his testimony in the form of an opinion is

limited to such an opinion as is: [¶] (a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and [¶] (b) Based on matter . . . that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion."

Evidence Code section 802 provides: "A witness testifying in the form of an opinion may state . . . the reasons for his opinion and the matter . . . upon which it is based, unless he is precluded by law from using such reasons or matter as a basis for his opinion. The court in its discretion may require that a witness before testifying in the form of an opinion be first examined concerning the matter upon which his opinion is based."

In *Sargon*, this court explained that under Evidence Code sections 801, subdivision (b), and 802, "the trial court acts as a gatekeeper to exclude expert opinion testimony that is (1) based on matter of a type on which an expert may not reasonably rely, (2) based on reasons unsupported by the material on which the expert relies, or (3) speculative." (*Sargon*, *supra*, 55 Cal.4th at pp. 771–772.) However, "the gatekeeper's focus 'must be solely on principles and methodology, not on the conclusions that they generate.' " (*Id*. at p. 772.) "The goal of trial court gatekeeping is simply to exclude 'clearly invalid and unreliable' expert opinion. (*Ibid*.)

Tran argues for the application of Federal Rules of Evidence, rule 702, and cites federal cases in support of his argument that

the trial court failed in its gatekeeping duties. (Second Supp. AOB 96–106.) However, California's statutory rules and case law provide means for ensuring the reliability of expert opinion testimony. (*Veamatahau*, *supra*, 9 Cal.5th at pp. 34–35.) "In fact, in law, and in practice, testimony admitted under [Evidence Code] sections 801 or 802 is subject to scrutiny on reliability grounds by the court and opposing counsel." (*Id*. at p. 32.) Furthermore, decisions of the lower federal courts are not binding on this Court. (*People v. Seaton* (2001) 26 Cal.4th 598, 653.)

In California, "[e]xpert testimony is admissible to establish the existence, composition, culture, habits, and activities of street gangs; a defendant's membership in a gang; gang rivalries; the 'motivation for a particular crime, generally retaliation or intimidation'; and 'whether and how a crime was committed to benefit or promote a gang.' " (*People v. Hill* (2011) 191 Cal.App.4th 1104, 1120.) In testifying about these matters, "a gang expert may rely upon conversations with gang members, on his or her personal investigations of gang-related crimes, and on information obtained from colleagues and other law enforcement agencies." (*Id*. at pp. 1121–1122; see also *People v. Gonzalez* (2006) 38 Cal.4th 932, 949 ["A gang expert's overall opinion is typically based on information drawn from many sources and on years of experience, which in sum may be reliable"].)

In *Sanchez,* this Court explained, "Our decision does not call into question the propriety of an expert's testimony concerning background information regarding his knowledge and expertise and premises generally accepted in his field." (*Sanchez*, *supra*, 63

Cal.4th at p. 685.) Thus, the Court concluded that the gang expert's background testimony about general gang behavior or descriptions of the Delhi gang's conduct and its territory was based on "well-recognized sources" in the expert's "area of expertise."[13] (*Id*. at p. 698.)

At the time of trial, prior to *Sanchez*, an expert could relate hearsay to explain the basis of an opinion if the jury was given a limiting instruction that "matters admitted through an expert go only to the basis of his opinion and should not be considered for their truth," and the probative value of the evidence was not substantially outweighed by the probability that the jury would ignore the limiting instruction. (*People v. Montiel* (1993) 5 Cal.4th 877, 919, overruled by *Sanchez, supra*, 63 Cal.4th at pp. 679–686.) Almost 20 years after Tran's trial, *Sanchez* held that an expert is generally not permitted to supply case-specific facts about which he has no personal knowledge. (*Sanchez*, at p. 676.)

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[13] The gang expert who testified in *Sanchez* "had been a gang suppression officer for 17 of his 24 years on the force. His experience included investigating gang-related crime; interacting with gang members, as well as their relatives; and talking to other community members who may have information about gangs and their impact on the areas where they operate. As part of his duties, Stow read reports about gang investigations; reviewed court records relating to gang prosecutions; read jail letters; and became acquainted with gang symbols, colors, and art work. He had received over 100 hours of formal training in gang recognition and subcultures, offered by various law-enforcement agencies in Southern California and around the nation. He had been involved in over 500 gang-related investigations." (*Sanchez*, *supra*, 63 Cal.4th at p. 671.)

However, an expert may "testify about more generalized information, even if derived from hearsay, to help jurors understand the significance of the case-specific facts." (*Ibid*.) Furthermore, "[e]xploration of an expert's opinion based on case-specific facts outside the expert's personal knowledge can still be accomplished through the use of hypothetical questions." (*Id*. at pp. 676–677.)

The record reflects that both Nye and Todd had reliable bases for their opinions. Nye was a police sergeant with the Westminster Police Department and had twelve years of experience working in the area of Vietnamese street gangs. (7 RT 1460.) His job entailed continuous contact with Vietnamese gang members. (7 RT 1464.) He talked to gang members about their lifestyles, expectations that gang members have within their culture, and other gang concepts. (7 RT 1465–1466.) He investigated crimes committed by VFL gang members, and talked to VFL gang members. (7 RT 1485.) He also reviewed documents and reports relating to convictions and crimes committed by VFL gang members. (7 RT 1529.) In addition, he wrote a paper about home invasion robberies by Asian gangs. (7 RT 1462.)

Todd, a probation officer, was assigned to the gang unit in Garden Grove from 1995 until 1999, when he was promoted to supervisor (6 RT 1147). He worked with the police department and the District Attorney's Office in connection with gang cases. (6 RT 1147.) He also attended conferences and trainings regarding gangs. (6 RT 1148). About half of Todd's caseload was Asian gang members. (6 RT 1150.) Todd talked to Asian gang

members about the expectations within their gang culture, tattoos and the significance of tattoos, and the concepts of respect and bragging. (6 RT 1150–1151.) In addition, he exchanged information with other investigators and detectives who worked the gang detail in that area; he met weekly with the individuals on his team and attended large monthly meetings where agencies shared intelligence. (6 RT 1151–1152).

Accordingly, Nye and Todd relied on well-recognized sources in the area of their expertise in reaching their opinions about the meaning of Tran's "forgive" tattoo. Under the law at the time of trial, Nye also had reliable bases for reaching his opinions regarding: whether the VFL was a criminal street gang; whether, as posed in a hypothetical, the charged crimes were done for the benefit of, at the direction of, or in association with the VFL to promote, further, and assist in the criminal conduct of the gang; and whether Plata and Tran were gang members.

As discussed in Section XVIII, *ante*, under *Sanchez*, the true finding on the gang enhancement should be reversed because Nye related case-specific hearsay to establish the predicate offenses. However, even under *Sanchez*'s principles, Nye's opinion regarding Tran and Plata's gang membership, and Nye and Todd's opinion regarding the meaning of the "forgive" tattoo, were properly supported by the application of the experts' background knowledge to the specific facts of this case. (See Section XIX.A, B, *ante*.)

Tran complains that Nye and Todd failed to provide sufficient details regarding the factual bases for their opinions.

(Second Supp. AOB 120–130.) But, the prosecution having laid a foundation of general acceptance for the expert testimony, it was up to Tran to challenge the foundation by, for example, cross-examination, the introduction of contrary evidence, a motion in limine, a motion to strike, or in argument to the jury that the testimony was unreliable. (*Valencia*, *supra*, 11 Cal.5th at p. 838, fn. 16.) Furthermore, Tran could have asked to voir dire the experts prior to their testimony and probed the acceptability of their methodology. (*Veamatahau, supra*, 9 Cal.5th at pp. 34–35.) Tran did none of these things.

Even assuming the trial court failed in carrying out its gatekeeping duties, such error was harmless beyond a reasonable doubt for the reasons discussed in Sections XIX.C and XX, *ante*.

XXII. TRAN'S DEATH SENTENCE IS NOT UNCONSTITUTIONAL BECAUSE HE WAS 20 YEARS OLD WHEN HE COMMITTED THE CAPITAL CRIME

Tran argues that because he was 20 years old at the time he committed the charged crimes, his death sentence violates the Eighth Amendment. (Second Supp. AOB 135–196.) This argument is substantially the same as Plata's Argument X (Plata's Supp. AOB 36–74), which Tran joined.[14] Respondent

[14] Tran updates some of the statistics and adds an argument that the special circumstances in this case fail to adequately narrow the class of persons eligible for the death penalty because they do not allow the trier of fact "to consider the hallmarks of youth identified in *Roper*." (Second Supp. AOB 191.) Because Tran's additional argument is based on the same premise that 18- to 20-year-old offenders categorically lack sufficient culpability to be subjected to the death penalty, there is no need to address this argument separately.

addressed this argument in Respondent's Supplemental Brief, pages 11–21, and will not repeat the argument here.

Respondent only adds that this Court recently rejected a claim that the death penalty violates the Eighth Amendment's prohibition against "cruel and unusual" punishment when applied to defendants who were 21 years or younger at the time they committed their crimes. (*People v. Flores* (2020) 9 Cal.5th 371, 429.) The Court determined that Flores had failed to establish a national consensus that there should be a categorical bar on the death penalty for defendants who were between the ages of 18 and 21 at the time they committed their offenses. (*Ibid*.) The Court also found unpersuasive Flores's argument that the death penalty is inherently unreliable for those ages 18 to 21. (*Id*. at p. 430.)

Tran has failed to establish a basis for moving the line drawn by *Roper v. Simmons* (2005) 543 U.S. 551 at 18 years of age to 21. Of course, the " 'qualities that distinguish juveniles from adults do not disappear when an individual turns 18,' " but nevertheless, the " 'age of 18 is the point where society draws the line for many purposes between childhood and adulthood' " and is " 'the age at which the line for death eligibility ought to rest.' " (*People v. Powell* (2018) 6 Cal.5th 136, 191–192.)

XXIII. THERE WAS NO CUMULATIVE ERROR

Tran argues that cumulative prejudice from all of the errors alleged in his briefing requires reversal of the guilt verdict, the special circumstance findings, and the verdict of death. (Second Supp. AOB 194–196.)

This court has recognized that multiple trial errors may have a cumulative effect. (*People v. Hill* (1998) 17 Cal.4th 800, 844–848; *People v. Holt* (1984) 37 Cal.3d 436, 458–459.) The relevant inquiry is whether the error, individually or cumulatively, "significantly influence[d] the fairness of defendant's trial or detrimentally affect[ed] the jury's determination of the appropriate penalty." (*People v. Valdez* (2004) 32 Cal.4th 73, 139.)

If the reviewing court rejects all of a defendant's claims of error, it should also reject the contention of cumulative error. (*People v. Anderson* (2001) 25 Cal.4th 543, 606; *People v. Bolin* (1998) 18 Cal.4th 297, 335.) Similarly, a defendant's cumulative error claim should be rejected where the few errors found or assumed have been deemed harmless. (*People v. Williams* (2015) 61 Cal.4th 1244, 1291 [rejecting claim of cumulative effect of error committed during both phases of trial because court either found no error or, in instances where error was found or assumed, no prejudice]; *People v. Bonilla* (2007) 41 Cal.4th 313, 360 [cumulative effect of two errors was not prejudicial and did not require reversal of the death sentence because each error independently was harmless]; *People v. Jablonski* (2006) 37 Cal.4th 774, 837 [finding no cumulative error where effect of few demonstrated was harmless].)

As discussed in detail in respondent's various briefs, any errors were few in number and harmless. Therefore, there was little if any error to accumulate, and Tran cannot establish cumulative error.

CONCLUSION

Respondent agrees that the true finding on the gang enhancement should be reversed. However, for the reasons set forth in Respondent's Brief, Respondent's Supplemental Brief, and Respondent's Second Supplemental Brief, the rest of the judgment should be affirmed. Provided that the rest of the judgment is affirmed, the People forgo remand for retrial of the gang enhancement.

Respectfully submitted,

ROB BONTA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
JAMES WILLIAM BILDERBACK II
Senior Assistant Attorney General
HOLLY D. WILKENS
Supervising Deputy Attorney General

/Christine Y. Friedman/
CHRISTINE Y. FRIEDMAN
Deputy Attorney General
Attorneys for Respondent

March 29, 2022

CERTIFICATE OF COMPLIANCE

I certify that the attached SECOND SUPPLEMENTAL RESPONDENT'S BRIEF uses a 13 point Century Schoolbook font and contains 8,858 words.

ROB BONTA
Attorney General of California

/Christine Y. Friedman/
CHRISTINE Y. FRIEDMAN
Deputy Attorney General
Attorneys for Respondent

March 29, 2022

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

Case Name: **People v. Tran, Ronald**

No.: **S165998**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. 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 with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On March 29, 2022, I electronically served the attached **SECOND SUPPLEMENTAL RESPONDENT'S BRIEF** by transmitting a true copy via this Court's TrueFiling system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 29, 2022, at San Diego, California.

N. Rodriguez
Declarant for eFiling

N. Rodriguez
Signature

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The Honorable William R. Froeberg
Judge
Orange County Superior Court
Central Justice Center
700 Civic Center Drive West
Department C40
Santa Ana, CA 92701

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 29, 2022, at San Diego, California.

B. Romero	B. Romero
Declarant for U.S. Mail	Signature

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STATE OF CALIFORNIA
Supreme Court of California

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Jolie Lipsig Office of the State Public Defender 104644	jolie.lipsig@ospd.ca.gov	e-Serve	3/29/2022 2:32:55 PM
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Office Office Of The District Attorney Court Added	Appellate@da.ocgov.com	e-Serve	3/29/2022 2:32:55 PM
Christine Friedman Court Added 186560	Christine.Friedman@doj.ca.gov	e-Serve	3/29/2022 2:32:55 PM
Catherine White Law Office of Catherine White, APC 193690	white193690@gmail.com	e-Serve	3/29/2022 2:32:55 PM
Natalie Rodriguez	Natalie.Rodriguez@doj.ca.gov	e-Serve	3/29/2022 2:32:55 PM

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Date

/s/Natalie Rodriguez

Signature

Friedman, Christine (186560)

Last Name, First Name (PNum)

Department of Justice, Office of the Attorney General-San Diego

Law Firm