

SUPREME COURT COPY

THE SUPREME COURT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

MICHAEL RAPHAEL CANIZALES, et al.,

Defendants and Appellants.

S221958



SUPREME COURT
FILED

APR 29 2016

Frank A. McGuire Clerk

Deputy

FOURTH DISTRICT COURT OF APPEAL, DIVISION TWO NO. E054056
SAN BERNARDINO SUPERIOR COURT NO. FVA1001265
Hon. Judge Steven Mapes, Presiding

CANIZALES' ANSWER TO THE AMICUS CURIAE BRIEF
BY MITCHELL KEITER

Christine Vento
CBN107660
P.O. Box 691071
Los Angeles, CA
90069-9071
323-936-5113
vento107660@gmail.com
Attorney for appellant
Michael Canizales
By appointment of the
Supreme Court



THE SUPREME COURT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

MICHAEL RAPHAEL CANIZALES, et al.,

Defendants and Appellants.

S221958

FOURTH DISTRICT COURT OF APPEAL, DIVISION TWO NO. E054056

SAN BERNARDINO SUPERIOR COURT NO. FVA1001265

Hon. Judge Steven Mapes, Presiding

CANIZALES' ANSWER TO THE AMICUS CURIAE BRIEF
BY MITCHELL KEITER

Christine Vento
CBN107660
P.O. Box 691071
Los Angeles, CA
90069-9071
323-936-5113
vento107660@gmail.com
Attorney for appellant
Michael Canizales
By appointment of the
Supreme Court

TABLE OF CONTENTS

CANIZALES' ANSWER BRIEF TO THE AMICUS BRIEF	1
ARGUMENT	1
I. AMICUS CURIAE CORRECTLY ASSERTS THAT THE COURT OF APPEAL IN CANIZALES MISTAKENLY INDICATED THERE COULD BE A CONVICTION FOR ATTEMPTED MURDER WITHOUT AN INTENT TO KILL	1
II. AMICUS CURIAE ASSERTION THAT THE COURT OF APPEAL IN <i>MC CLOUD</i> ERRONEOUSLY CONCLUDED THAT AN OFFENDER COULD NOT BE GUILTY UNLESS HE TARGETED A PARTICULAR VICTIM IS IRRELEVANT TO THE ISSUE IN THIS CASE	2
III. AMICUS CURIAE EFFORTS TO CONSTRUE <i>PEOPLE V. STONE</i> IS POINTLESS BECAUSE THE <i>STONE</i> CASE IS INAPPLICABLE	
CONCLUSION	4

TABLE OF AUTHORITIES

CASES

<i>People v. Bland</i> (2002) 28 Cal.4th 313	3
<i>People v. Canizales</i> (2014) 229 Cal.App.4th 820	1
<i>People v. Cardona</i> (2016) WL 1469586	2
<i>People v. McCloud</i> (2016) (2012) 211 Cal.App.4th 788	2
<i>People v. Stone</i> (2009) 46 Cal.4th. 131	3, passim

MISCELLANEOUS

Mitchell Keiter, <i>With Malice Toward All: The Increased Lethality of Violence Reshapes Transferred Intent and Attempted Murder Law</i> (2004) 38 U.S.F.L. Rev. 261	3
--	---

THE SUPREME COURT OF CALIFORNIA

S221958

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

MICHAEL RAPHAEL CANIZALES, et. al.,

Defendants and Appellants.

CANIZALES' ANSWER BRIEF TO THE AMICUS BRIEF

ARGUMENT

- I. AMICUS CURIAE CORRECTLY ASSERTS THAT THE COURT OF APPEAL IN CANIZALES MISTAKENLY INDICATED THERE COULD BE A CONVICTION FOR ATTEMPTED MURDER WITHOUT AN INTENT TO KILL

Amicus Curiae states that “The Court of Appeal below mistakenly indicated an offender can be guilty of attempted murder without intending the victim’s death. (*People v. Canizales* (2014) 229 Cal.App.4th 820...)” (Amicus Brief 6.) “Attempted murder requires an intent to kill; the instant Court of Appeal erred insofar as it apparently denied that requirement. (*People v. Stone* [(2006)] 46 Cal.4th 131, 136.)” (Amicus Brief 7.)

Canizales agrees with Amicus Curiae. As fully explained in the BOM, Canizales believes that the Court of Appeal in his case allowed a conviction of attempted murder based solely on endangering people in the area.

Canizales believed that the *McCloud* case was relevant because it provided language that should be included in the kill zone instruction to prevent any jury or court from thinking that implied malice or an theory of endangerment could be the basis for an attempted murder conviction. (*People v. McCloud* (2012) 211 Cal.App.4th 788.)

II. AMICUS CURIAE ASSERTION THAT THE COURT OF APPEAL IN *MCCLLOUD* ERRONEOUSLY CONCLUDED THAT AN OFFENDER COULD NOT BE GUILTY UNLESS HE TARGETED A PARTICULAR VICTIM IS IRRELEVANT TO THE ISSUE IN THIS CASE

Amicus Curiae argues that “targeting a victim is not an essential element of attempted murder.” (Amicus Brief 12.) Appellant agrees with that proposition if you are dealing with a mass killing such as the Boston Marathon, but whether a specific individual was the primary target is not an issue here. The primary target is not an issue because, assuming arguendo that a kill zone existed, there is no question that its purpose was to facilitate the killing of Denzell Pride.

A recent case held that the court erred in instructing on the kill zone theory of liability for attempted murder where there was no evidence that the defendant - who shot the victim while aiming at another person - intended to kill anyone other than the person at whom he was aiming. (*People v. Cardona* B261458 (2016) WL 1469586 *4-5.) In *Cardona*, not only was there no evidence that the defendant intended to kill anyone other than the person at whom he was aiming, there was no evidence that he intended to kill an entire group of people, which is the Boston Marathon scenario. (*Id.*, at pp.*4-5) That is the same situation that exists in the *Canizales* case.

III. AMICUS CURIAE EFFORTS TO CONSTRUE *PEOPLE V. STONE* IS POINTLESS BECAUSE THE *STONE* CASE IS INAPPLICABLE

The Amicus Brief states that “This case will construe *People v. Stone* (2009) 46 Cal.4th. 131. Amicus curiae has contemplated the case and its ramifications fully, having filed the petition for review, as well as the opening and reply briefs, and having argued the case before this Court. Amicus also published one of the first and most comprehensive analyses of the issues presented in the seminal case of *People v. Bland* (2002) 28 Cal.4th 313. (Mitchell Keiter, *With Malice Toward All: The Increased Lethality of Violence Reshapes Transferred Intent and Attempted Murder Law* (2004) 38 U.S.F.L. Rev. 261.)” (Amicus Brief first unnumbered pages)

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. (*People v. Stone* (2009) 46 Cal.4th 131,139.) 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 of this case” because there was no showing that the defendant intended to take the lives of the entire group in order to kill one victim. (*Id.* at p. 138.) Instead, this Court affirmed the conviction by finding a specific intent to kill one person without resort to the kill zone theory. (*Id.* at pp. 140-141.)

Contrary to Amicus Brief, the *Stone* case is inapplicable

because it did not apply the kill zone theory.

CONCLUSION

Based on the above, nothing in the Amicus Brief negates Canizales' claim that his attempted murder conviction of Bolden in Count 2 should be reversed.

Respectfully submitted,

Christine Vento

WORD COUNT CERTIFICATION

I, Christine Vento, am counsel for petitioner. I hereby certify pursuant to Rule 8.520(c)(1) of the California Rules of Court that in reliance on the word count of the computer program used to prepare this document, the word count of the body of this document, excluding tables and this Certification, is 881 words. The applicable word-count limit is 14,000 words.

Dated 4/27/16

Christine Vento

PROOF OF SERVICE BY MAIL

I am a citizen of the United States, over the age of 18 years, employed in the County of Los Angeles, and not a party to the within action. My business address is P.O. Box 691071, Los Angeles, CA 90069-9071. I am a member of the bar of this court. On APRIL 27, 2016 ,I served the within CANIZALES' ANSWER TO AMICUS CURIAE BRIEF in said action, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows, and deposited the same in the U. S. mail at Los Angeles, CA.

Michael Canizales AH6617; D1 CELL 08
CSP/LAC POB 4670
Lancaster, CA 93539

Clerk of the Superior Court; For delivery to Hon. Steven Mapes
17780 Arrow Boulevard
Fontana, CA 92335

Deputy District Attorney attn. Norma Alejo, Esq.
17780 Arrow Boulevard
Fontana, CA 92335

PROOF OF SERVICE BY ELECTRONIC SERVICE
(Cal. Rules of Court, rules 2.251(i)(1)(A)-(D)& 8.71(f)(1)(A)-(D).)

Furthermore, I, Christine Vento, declare I electronically served from my electronic service address of vento107660@gmail.com the same referenced above document on 4-27-16 at or before (8 p.m.) to the following:

APPELLATE DEFENDERS INC,
e-service-criminal@adi-sandiego.com

ATTORNEY GENERAL'S OFFICE,
ADIEService@doj.ca.gov

COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION
TWO
<http://www.courts.ca.gov/15317.htm>

DAVID LAMPKIN dplampkin@aol.com

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 27TH day of APRIL 2016, at Los Angeles, CA.

Christine Vento