In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

RODRIGO PEREZ,

Defendant and Appellant.

Case No. S167051

Second Appellate District, Division One Case No. B198165
Los Angeles County Superior Court Case No. BA298659-01
The Honorable Judith L. Champagne, Judge

ANSWER BRIEF ON MERITS

EDMUND G. BROWN JR.
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
PAMELA C. HAMANAKA
Senior Assistant Attorney General
VICTORIA B. WILSON
Supervising Deputy Attorney General
LARRY M. DANIELS
Supervising Deputy Attorney General
MARY SANCHEZ
Deputy Attorney General
State Bar No. 162541
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2364
Fax: (213) 897-6496
Email: DocketingLAAWT@doj.ca.gov
Attorneys for Respondent

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ISSUE PRESENTED

Whether appellant's convictions for attempted murder of seven police officers and a civilian were supported by sufficient evidence when only one shot was fired, which struck an officer?

INTRODUCTION

Appellant, a member of a criminal street gang, fired one shot at a group of police officers and a civilian under the mistaken belief that he was firing at a group of rival gang members. The bullet struck and nearly severed one officer's finger. Appellant was convicted of eight counts of attempted murder, and was acquitted of a ninth count of attempted murder of the police officer that was the furthest away from the group. Appellant appealed and argued that the evidence was insufficient to sustain all but the conviction of the officer that the bullet actually hit. The Court of Appeal disagreed and affirmed appellant's convictions.

After the Court of Appeal's decision, this Court in *People v. Stone* (2009) 46 Cal.4th 131 [92 Cal.Rptr.3d 362] (*Stone*) held that a defendant that shoots at a group of people intending to kill any member of the group can be convicted of attempted murder, even though the defendant had no specific target in mind. Because the defendant in *Stone* was charged with and convicted of only one count of attempted murder, this Court had no cause to decide the question of "how many attempted murders a would be indiscriminate killer has committed" in this situation. (*Id.* at p. 369; see also *People v. Smith* (2005) 37 Cal.4th 733, 739, fn. 3 (*Smith*).)

This case, involving the sufficiency of the evidence to support eight attempted murder convictions, directly presents the question left open in *Stone*. Because there was substantial evidence that appellant intended to kill any of the eight closely proximate members of the group when he shot at them from his car, and, in doing so, endangered all of their lives, the

Court of Appeal correctly applied this Court's precedent to affirm the eight attempted murder convictions. In any event, the attempted murder convictions were also valid on the basis that substantial evidence showed that appellant's shot was a more-than-preparatory act furthering his plan to kill all of the perceived rival gang members, and that he raced away only upon realizing that his victims were actually police officers.

STATEMENT OF THE CASE

A. The Attempted Murders

Believing that a group of police officers were rival gang members, apparently due to poor lighting and his intoxication, appellant slowly drove by them and fired a shot in their direction. When he discovered that they were actually police officers, he accelerated and drove away, later saying that he had "fucked up." The prosecution's gang expert testified that this type of shooting was done for the benefit of appellant's gang.

The genesis of these events involved the police investigation of a carjacking in the area of Glenn Avenue and Grande Vista Avenue in Varrio Nuevo Estrada (VNE) gang territory in Los Angeles. At about 1:30 a.m., Los Angeles Police Officers located the stolen car and detained the carjacking suspects there. (1RT 39-40, 42-44, 64, 67, 70, 87, 101.) Other officers then began arriving in the area. (1RT 44-45.) Two officers brought the two carjacking victims with them for a field show-up and to identify the property found in the stolen car. (1RT 45, 98, 100-101.) The victims identified the two detained suspects, who were then taken to the police station. (3RT 988-989.) At that point, there were three police cars in the parking lot and a fourth police car parked at the corner of Glenn Avenue and Grande Vista Avenue. (1RT 46.)

Nine officers were by the stolen car: Officer Matthew Meneses was about three feet from Officer Rodolfo Fuentes (1RT 48); Officer Benjamin

Aguilera was about five feet from Officer Fuentes (1RT 71, 75-76); Officer Lisa Trujillo was about two feet from Officer Fuentes (1RT 102); Officer Ricardo Ortega was taking pictures of property within the stolen car (3RT 925, 927); Officer Omar Davis was about four to eight feet from Officer Fuentes (2RT 621, 627, 635); Officer Alfonso Villaneda was within 10 to 15 feet of the other officers (4RT 1176); and Officer William Monahan was 20 to 30 feet away from the other officers. (2RT 710.)

The area where Officer Meneses was standing at the time of the shooting was "rather dark." (1RT 50.) Officer Aguilera described the parking lot area as being illuminated with "overhang" lighting, as was the corner of Glenn and Grande Vista Avenues. (1RT 72.) The lighting was "good enough" to see. (1RT 72-73.) Officer Monahan described the lighting in the parking lot as "very dim" and "very dark." (2RT 712.)

While the nine officers were standing around the stolen car, a car turned from Olympic onto Grande Vista. The car was driving slowly, about 10 to 15 miles per hour and approximately 60 feet from the white car. Officers Meneses and Aguilera saw a muzzle flash coming from Grande Vista, and they threw themselves down on the ground. At this time, Officer Fuentes was talking to a carjacking victim (Juan Machic), who was standing next to him, when Officer Fuentes heard a gunshot and immediately felt pain to his left hand. A gunshot had almost completely severed Officer Fuentes's middle finger. At the time of the gunshot, Officer Fuentes was just getting off his cell phone and his left hand was less than a foot from his head. Immediately after the gunshot, Office Fuentes dropped down on one knee and pulled the carjacking victim down with him. When Officer Meneses got up from the ground, he saw a vehicle speeding off, northbound on Grande Vista. Officer Fuentes got on the radio and broadcast that he had been shot. (1RT 47-48, 67-68, 74, 82, 102, 109; 3RT 989-990, 995; 4RT 1161, 1222.)

Officer Ortega looked up when he heard the gunshot and saw a male in a black, hooded sweatshirt, leaning his torso out of the front right passenger window of the vehicle. There appeared to be two Hispanic males in the car. Officer Ortega ran into the middle of the street, trying to get a license plate number of the vehicle, but was unsuccessful. (3RT 927, 930, 952; 4RT 1174.) Officers Davis and Ortega pursued the shooter's vehicle in their patrol car, followed by Officers Trujillo and Villaneda in their patrol car, but they were unable to catch up to the shooter's car. (1RT 102-104; 2RT 621.)

A few hours later, at about 4:00 a.m., Gabriel Hernandez came home through the back door to the apartment on Grande Vista Avenue that he shared with family members. (4RT 1128-1129.) There was a bullet hole in the front door that had not been there before Hernandez had gone out on the evening of July 2, 2005. (4RT 1129-1130, 1193-1194.) The bullet from the drive-by shooting had gone through the metal security door and the wooden front door, traveled across the apartment and into the kitchen, and struck a kitchen cabinet. (4RT 1192-1195.) The bullet had then bounced into a bathroom. (4RT 1196-1197; 6RT 1796.) A police criminalist later examined the bullet and found it to be consistent with a .40-caliber or a 10-millimeter caliber semiautomatic handgun, possibly manufactured by Glock. (4RT 1211, 1213.)

Officer Ortega later went to Commerce and identified a 1993 Mazda registered to Vanessa Espinoza, appellant's then-girlfriend, as the one that was being driven during the shooting. (1RT 116, 132; 3RT 937, 940-941; see also 2RT 632-634.) The police conducted surveillance on the Mazda. (3RT 954, 1006; 4RT 1237.) About 12:30 p.m. on July 4, 2005, appellant approached the Mazda and drove away. (3RT 1008-1009.) The police followed, stopped, and arrested appellant. (3RT 1025.)

Various witnesses described at trial how appellant came to shoot at the group of officers in the early morning of July 3. With regard to appellant's gang affiliation, Espinoza, who was appellant's ex-girlfriend at the time of trial, testified that he was a former member of the Eighth Street gang when she moved in with him. (4RT 1289-1290.) She added that appellant got involved with gangs when he was 15 or 16 years old. (4RT 1351.) The Eighth Street gang and VNE are rivals and their territory is near each other. (4RT 1290.)

Espinoza also specifically implicated appellant in the shooting. She testified that on July 2, 2005, after leaving a barbecue, appellant drove her and her cousin back to his house on Agra Street and dropped them off sometime before midnight. (4RT 1235, 1240-1241, 1244.) Appellant did not tell Espinoza where he was going. (4RT 1245.) Espinoza later saw appellant at around 3:00 a.m. the next morning. Appellant woke Espinoza and said he needed to talk to her. (4RT 1247-1248, 1250.) Appellant told Espinoza that he "fucked up." He was very nervous. (4RT 1248-1249, 1252.) Espinoza told appellant to relax and calm down, and that they would talk about it in the morning. Espinoza believed appellant was drunk. They went back to bed and went to sleep. (4RT 1253-1254.) Later that day, appellant and Espinoza watched the news. The news was about an officer being shot. Appellant again said he had "fucked up." Appellant did not tell Espinoza how the shooting occurred. (4RT 1261-1262.) When appellant was arrested the next day, he was driving to the beach with Espinoza and some friends. (4RT 1263, 1265-1266.) Before getting out of the car, appellant told Espinoza and the others to "stay quiet" and "shut up." (4RT 1275-1276.)

After appellant was released from jail, Espinoza had a conversation with him about what happened on the night of the shooting. Appellant told her that he was on his way home when he saw a bunch of bald-headed men

and fired a shot thinking that he was shooting at VNE gang members, and that only after the shot did he notice it was the police. (4RT 1288-1289, 1373-1374.)

Jose Morales grew up with appellant in the Wyvernwood Apartments in Boyle Heights. Morales knew appellant as "Creeper." Morales testified that appellant hung around with Eighth Street gang members, who were rivals of the VNE gang. Morales was aware of the officer shooting over the July 4, 2005 weekend, because "everyone in the neighborhood was talking about it." (5RT 1549, 1561.)

After the shooting, Morales had a telephone conversation with appellant. Appellant said that he was paranoid, which Morales understood to mean they were not to say anything on the telephone. Appellant wanted Morales to meet him at appellant's house. (5RT 1550.) Morales met appellant because he wanted to hear what had happened. (5RT 1551-1552.) Appellant said he had been drinking with friends and before going home decided to pass by VNE territory. Appellant said he got to a stop sign, looked to his right, and saw some bald heads. Appellant figured the bald heads were VNE gang members, so he decided to shoot at them. Appellant fired a shot, and then realized that they were police officers when they ducked and he saw the light flashing off their badges. Appellant stepped on the accelerator and got away from there. (5RT 1552.) Morales asked what gun he used, and appellant said "Gizmo's Glock." Appellant told Morales that he gave the gun back to "Gizmo," whose real name was Paul Leyva. (5RT 1554, 1604.) Appellant did not mention any other males being in the car with him at the time of the shooting. (5RT 1555.)

Paul Leyva testified under a grant of immunity and in the presence of his attorney. Leyva knew appellant as "Creeper." (5RT 1614.) Leyva and appellant both belonged to the Eighth Street gang. (5RT 1618; 6RT 1742-1743.) Leyva had a "40 Glock" gun. He went to visit appellant at

appellant's home two days after he bought the gun. Appellant owed Leyva money for some drugs. Appellant paid the money. As Leyva was counting out the money, appellant took Leyva's gun from the back of his waistband. Appellant looked the gun over and told Leyva it was a nice gun. Leyva asked for it back. Appellant did not want to give it back. Appellant said, "[L]et me hold on to it. Let me use it." Leyva did not want any problems so he told appellant he could have it for two days and that he would then come back for it. Two days later, Leyva returned for the gun. (5RT 1615-1617, 1619, 1626, 1653, 1661.) Appellant told Leyva he had done something the night before in VNE territory. Appellant said he was alone in the car, he was "kind of intoxicated that night," he fired a shot, and he "just sped off home." Appellant said that he did not know if he had hit anybody. After Leyva got the gun back, he traded it away. (5RT 1617-1618, 1637-1638.)

Officer Jose Vasquez, a gang expert, testified that the Eighth Street gang and the VNE gang were rivals and that Grande Vista Avenue separates the gangs' respective territories. The apartment parking lot at Grande Vista Avenue and Glenn Avenue is in VNE territory. The Eighth Street gang commits crimes such as murders, attempted murders, robberies, narcotics sales, drive-by shootings, assaults with a deadly weapon, sexual assaults, and carjackings. (5RT 1677-1680.) Gang members commit drive-by shootings generally by planning to shoot at a specific target or in a specific rival gang area, and then driving off. Officer Vasquez was aware of instances where gang members committing a drive-by shooting mistakenly targeted a non-gang member because of his or her attire, haircut, or location. (5RT 1682-1684.) Officer Vasquez was presented with a hypothesis based on the facts of the instant case. Officer Vasquez opined that the shooting was done for the benefit of the gang. (5RT 1712-1715.)

In his defense, appellant testified that he was merely giving a ride to a friend in the Eighth Street gang that night. (7RT 1946-1947, 1953.) Appellant drove down Olympic Boulevard, intending to get on the freeway. (7RT 1948.) Appellant turned on Grande Vista and drove slowly past a parking lot. Appellant's friend said, "Who's them fools right there, fool?" Appellant said, "I don't know, fool." Appellant then heard a loud pop. He looked and saw his friend was holding a gun. Appellant's friend said, "Step on it, fool," so appellant stepped on it and drove down Grande Vista to Eighth Street, and then onto the freeway. (7RT 1950-1951, 1953.)

Appellant further testified that when he got on the freeway he excoriated his friend for involving him and his girlfriend's car in a shooting. His friend told appellant to not say anything and nothing would happen. Appellant got off the freeway and dropped his friend off. His friend again warned appellant not to say anything. (7RT 1951-1952.) Appellant then got back on the freeway and drove home. (7RT 1953.) He never told the police what happened because Morales told him not to snitch and he was afraid that he or his family would be killed. (7RT 1959-1962, 1974.)

B. The Trial Proceedings

A Los Angeles County jury convicted appellant of seven counts of attempted willful, deliberate, and premeditated murder of a police officer, one count of attempted murder, eight counts of assault on a peace officer with a semiautomatic firearm, and one count of assault with a semiautomatic firearm.[1] The jury also found firearm, great bodily injury, and gang enhancements. The jury acquitted appellant only of attempted

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[1] Appellant was also convicted of and received a stayed sentence for one count of felony vandalism based on an incident on July 1 where he spray-painted Eighth Street graffiti on a wall.

murder and assault charges as to Officer William Monahan, who was 20 or 30 feet away from the group that appellant shot at. (2CT 301-312, 421, 584-604.) The trial court sentenced appellant to state prison for a total term of 40 years to life based on the attempted murder and enhancements in count 1 (Rodolfo Fuentes). The court ran the remaining attempted murder counts and enhancements concurrently, and stayed the assault counts under Penal Code section 654. (3CT 656-668.)

C. The Appeal

Appellant contended in the Court of Appeal that there was insufficient evidence to sustain the attempted murder convictions, with the exception of the attempted murder conviction of Officer Fuentes, the officer who was shot in the finger. In an unpublished decision, the Court of Appeal held that the evidence was sufficient to support all eight attempted murder convictions. The court explained, "The jury, which heard testimony and viewed exhibits regarding the officers' relative locations, was in a position to determine whether the officers' proximity to each other was such that in intending to kill any of the officers defendant's shooting endangered the lives of all." (Slip Opn. at 10.)

The Court of Appeal relied on two cases in reaching this conclusion, *People v. Smith* and *People v. Chinchilla*. In *People v. Smith,* this Court applied the deferential sufficiency of the evidence standard to hold that there was substantial evidence to support the jury's verdicts that the defendant intended to kill both a mother and her baby, even though he fired a single shot, because the baby was within the line of fire. (*Smith, supra,* 37 Cal.4th at pp. 746-747.) In *People v. Chinchilla*, the Court of Appeal upheld two attempted murder convictions where the defendant fired once at two officers, one of whom was crouched in front of the other. In finding that the evidence was sufficient to support the attempted murder conviction of the second officer (the one who was behind the crouching officer), the

Court of Appeal reasoned that, "'[t]he fact that the shooter may have fired only once and then abandoned his efforts out of necessity or fear does not compel the conclusion that he lacked the animus to kill in the first instance.'" (*People v. Chinchilla* (1997) 52 Cal.App.4th 683, 690 (*Chinchilla*), quoting *People v. Lashley* (1991) 1 Cal.App.4th 938, 945.)

Writing in dissent, Justice Rothschild argued that an appellate court should examine the attempted murder convictions collectively rather than individually, and that for the prosecution to overcome a sufficiency challenge to attempted murder convictions, the defendant must have the apparent ability to commit *all* the crimes. Relying on Justice Werdegar's dissenting opinion in *Smith, supra*, 37 Cal.4th at page 754, Justice Rothschild noted that Justice Werdegar had "rejected as 'absurd' the conclusion that 'an assailant has tried to murder everyone his act endangers.'" (Slip Opn. at 3 (dis. opn. of Rothschild, J.).) Justice Rothschild concluded that "the majority still embraces the conclusion that Justice Werdegar rejected, basing its reasoning on the inference that Perez 'endangered the lives' of everyone in the group." (*Ibid.*)

On November 19, 2008, this Court granted appellant's petition for review on whether there was sufficient evidence to support appellant's attempted murder convictions.

SUMMARY OF ARGUMENT

The Court of Appeal correctly concluded that the evidence was sufficient to support appellant's eight attempted murder convictions. Appellant discharged his gun directly at a closely proximate group of persons that he perceived to be rival gang members, intending to kill any of them. By endangering the lives of eight persons, not to mention those of persons in the nearby apartment that the gunshot went into, appellant's culpability was worse than that of an assailant that shoots at only one isolated victim. This greater culpability justifies his increased criminal

liability for eight attempted murders rather than one. Sentencing is the time to consider such equities as how many shots the defendant fired at the group, and, when appropriate, to sentence concurrently, as the trial court did in this case.

Moreover, this Court should affirm the attempted murder convictions on an alternate ground, that the evidence here was sufficient to show that appellant had the intent to kill every member of the crowd that he shot at and that he committed a direct but ineffectual act toward that end. Although appellant did not have the apparent ability to kill all eight of the people with a single shot, he did have the apparent ability to continue shooting until he did kill them all. The jury could reasonably infer that the only reason that appellant did not continue shooting was because he realized after the first shot that he was shooting into a group of police officers, and not into a group of rival gang members.

ARGUMENT

I. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE ATTEMPTED MURDER CONVICTIONS

The crime of attempted murder requires an intent to kill and a direct but ineffectual act toward that end. Appellant, under the mistaken belief that he was firing into a crowd of rival gang members, fired a .40-caliber Glock handgun into a crowd of police officers and one civilian, intending to kill any of them, and as many of them as possible. The bullet nearly severed the finger of Officer Fuentes, and then went through a nearby apartment's metal security door and the wooden front door into the kitchen, struck a kitchen cabinet, and bounced into a bathroom. Even though appellant did not specifically target Officer Fuentes, his guilt for the attempted murder of Officer Fuentes is indisputable. (See *Stone, supra,* 92 Cal.Rptr.3d at p. 368; *Smith, supra,* 37 Cal.4th at p. 736.) Indeed, appellant concedes that the attempted murder conviction of Officer Fuentes should be

affirmed. (AOB 7.) He argues, however, that the seven other attempted murder convictions should be reversed. (AOB 10-24.)

But examining each of the eight counts individually, as this Court has instructed, the presence of seven additional persons surrounding Officer Fuentes combined with appellant's intent to shoot any one of them fulfills the established elements of the crime of attempted murder as to each of those persons. Under the deferential sufficiency of the evidence standard, the fact that only a single bullet was fired should not jettison appellant's attempted murder convictions, particularly because a person that shoots at multiple persons is more culpable than one that shoots only "at an isolated individual." (*In re Tameka C.* (2000) 22 Cal.4th 190, 196.)

In any event, the evidence was sufficient to conclude that appellant's shot was a direct act towards accomplishing his plan to kill *all* of the perceived gang members in the group. Under this Court's authority, appellant's abandonment of his plan on seeing the police did not vitiate either element of the attempted murders.

A. Applicable Law

The standard for evaluating insufficiency of the evidence claims is well-settled:

> To assess the evidence's sufficiency, we review the whole record to determine whether any rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. (*People v. Maury* (2003) 30 Cal.4th 342, 403 (*Maury*).) The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*Id.* at p. 396.) In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. ([*People v.*] *Boyer* [2006] 38 Cal.4th [412,] 480.) "Conflicts and even testimony [that] is subject to justifiable suspicion do

> not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]" (*Maury, supra*, at p. 403.) A reversal for insufficient evidence "is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support'" the jury's verdict. (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

(*People v. Zamudio* (2005) 43 Cal.4th 327, 357-358.)

"Attempted murder requires the specific intent to kill and the commission of a direct but ineffectual act toward accomplishing the intended killing." (*People v. Superior Court (Decker)* 41 Cal.4th 1, 7.) "There is rarely direct evidence of a defendant's intent. Such intent must usually be derived from all the circumstances of the attempt, including the defendant's actions." (*Chinchilla, supra,* 52 Cal.App.4th at p. 690, quoted with approval in *Smith, supra*, 37 Cal.4th at p. 741.) "[T]he overt act must go beyond mere preparation and show that the killer is putting his or her plan into action; it need not be the last proximate or ultimate step toward commission of the crime or crimes [citation], nor need it satisfy any element of the crime [Citation]." (*People v. Superior Court, supra,* 41 Cal.4th at p. 7; see also *People v. Dillon* (1983) 34 Cal.3d 441, 454-455 [attempt requires intent and overt act, but does not require commission of actual element of offense involved].)

The "[i]ntent to unlawfully kill and express malice are, in essence, 'one and the same.'" (*Smith, supra,* 37 Cal.4th at p. 739, quoting *People v. Saille* (1991) 54 Cal.3d 1103, 1114.) Section 188 categorizes malice as express "when there is manifested a deliberate intention to *take away the life of a fellow creature*." (Italics added.) "Express malice requires a showing that the assailant "either desire[s] the result [i.e., death] or know[s], to a substantial certainty, that the result will occur." (*Smith,*

supra, 37 Cal.4th at p. 739, internal citation and quotation marks omitted.) This Court has long defined malice in a manner that extends beyond the relationship between the perpetrator and the victim: "It is not confined to the intention of doing an injury *to any particular person*, but extends to an evil design, a corrupt and wicked notion *against some one* at the time of committing the crime." (*People v. Ah Toon* (1886) 68 Cal. 362, 363, italics added.) From the 19th century to the 21st, express malice has meant the intent to take life, not a particular one: "'[T]o constitute an attempt to murder, he must so intend ["to take life"].' [Citation.] 'The wrong-doer must specifically contemplate taking life . . . .'" (*People v. Bland* (2002) 28 Cal.4th 313, 327-328 (*Bland*), quoting *People v. Mize* (1889) 80 Cal. 41, 43.)

Thus, this Court has most recently stated that "a person who intends to kill can be guilty of attempted murder even if the person has no specific target in mind. An indiscriminate would-be killer is just as culpable as one who targets a specific person." (*Stone, supra,* 92 Cal.Rptr.3d at p. 369.) And, while a "[d]efendant's guilt of attempted murder must be judged separately as to each alleged victim" (*Bland, supra,* 28 Cal.4th at p. 331), "this is true whether the alleged victim was particularly targeted or randomly chosen" (*Stone, supra,* 92 Cal.Rptr.3d at p. 369). There is no requirement that the jury find that the defendant had a specific intent to kill a particular victim. (*Id.* at p. 370; *People v. Vang* (2001) 87 Cal.App.4th 554, 564; *People v. Herrera* (1999) 70 Cal.App.4th 1456, 1467.) Indeed, an offender whose malice extends to *anyone* whom the offender perceives to be a gang rival is even more culpable than one who confines his malice to one targeted victim. (See *People v. Rand* (1995) 37 Cal.App.4th 999, 1001 ["A studied hatred and enmity, including a preplanned, purposeful resolve to shoot anyone in a certain neighborhood wearing a certain color,

evidences the most cold-blooded, most calculated, most culpable, kind of premeditation and deliberation"].)

B. The Court of Appeal Correctly Found that Because Appellant Intended to Kill Any One of the Contiguous Crowd of Eight Persons, There Was Sufficient Evidence to Support All Eight Attempted Murder Convictions

The crime of attempted murder sanctions what the would-be killer intended to do but did not accomplish. Appellant intentionally shot into a crowd under the mistaken belief that he was shooting at a group of rival gang members. Viewed in the light most favorable to the People, and presuming the existence of every fact the jury could reasonably deduce from the evidence in support of the judgment, the evidence is sufficient to support appellant's eight convictions of attempted murder.

Based on the evidence in this case, a reasonable jury would infer that appellant did not have a specific target when he fired into the group of officers from a distance of 60 feet. The officers were standing around a vehicle in a parking lot variously described as "very dim," "rather dark," but "good enough to see." (1RT 50, 72-73; 2RT 712.) Appellant told Morales that he fired a shot at the group of officers under the mistaken belief that they were rival gang members. (5RT 1552.) Thus, there is substantial evidence supporting the inference that appellant shot indiscriminately into the group under the mistaken belief that he was firing into a group of rival gang members.[2]

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[2] The prosecutor argued that with appellant's one shot, he attempted to kill anyone and also initiated his plan to kill the others in the group:

> In this particular case, you have the firing of a gun in the direction of a group, not so much with a specific target in mind. It wasn't that he was trying to kill everybody so as to get Officer Fuentes. His intent was to shoot into that group to kill anybody,

(continued...)

Furthermore, under this evidence, the jury could have reasonably concluded that appellant fired his weapon indiscriminately into the crowd with the intent to kill *any* person in the group, based on his mistaken belief that the group consisted of his hated rivals. Appellant was willing to endanger any of the persons in that crowd, rather than just a particular one, rendering him more culpable, not less. (See *In re Tameka C., supra,* 22 Cal.4th at p. 196 ["It is clear that a person who engages in an urban gun battle is more culpable than one who fires a weapon at an isolated individual. The risk of injury to bystanders clearly is a risk arising from even one firing of the weapon. The more culpable and dangerous the behavior, the greater the need exists for effective deterrence"]; see also *People v. Oates* (2004) 32 Cal.4th 1048, 1070 (conc. opn. of Werdegar, J.) [the defendant was convicted of five counts of attempted murder based on his act of firing two shots "in the direction of" a group of five rival gang members which "certainly makes his offense worse than that of an assailant who shoots at only a single victim," and his "increased culpability" was "fully punished by the additional attempted murder convictions"].) Thus, he should be held accountable for eight counts of attempted murder.

Justice Rothschild's dissent below incorrectly interprets *Bland* and *Smith* to mean that appellant's attempted murder convictions must be collectively, rather than individually, considered. In *Bland*, this Court

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(...continued)

> wherever that bullet hit. . . . The actual shooting of Officer Fuentes, that one shot, was actually an attempted murder of everybody in the group. It was the beginning of going out to kill others. He stopped because he was like, uh-oh, wrong group to be shooting at.

(7RT 2110-2111.) On rebuttal, the prosecutor reiterated, "When this person fired into that group, this person was aiming to shoot anybody in the group." (7RT 2206.)

directed that a defendant's "guilt of attempted murder must be judged separately as to each alleged victim." (*People v. Bland, supra*, 28 Cal.4th at p. 331; accord, *Stone, supra*, 92 Cal.Rptr.3d at pp. 369-370.) Additionally, the *Smith* decision was a "fact-specific sufficiency of evidence claim" (*Smith, supra,* 37 Cal.4th at p. 747), and did not consider the issue of how many attempted murders a would-be indiscriminate killer has committed when he fires a single shot into a crowd. Cases are not authority for matters not considered. (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1176.)

Like the convictions in *Bland*, each of appellant's eight attempted murder convictions should be judged separately as to each victim. Moreover, as in *Smith*, this Court should consider the validity of each attempted murder conviction as a "fact-specific sufficiency of the evidence claim." (*Smith, supra*, 37 Cal.4th at p. 747.) At the time that Officer Fuentes's finger was nearly severed from his hand by the .40-caliber bullet fired by appellant, there were two officers standing two to three feet from Officer Fuentes (Officers Meneses [1RT 48] and Officer Trujillo [1RT 102]); the civilian carjack victim was standing right next to Officer Fuentes (1RT 103; 3RT 990); Officer Ortega was standing near the other officers, taking photographs of the stolen car (3RT 925-927); Officer Davis was four to eight feet from Officer Fuentes (2RT 621, 627, 635); and Officer Villaneda was 10 to 15 feet away (4RT 1176).[3] It was for the jury to determine whether these individuals were "close enough" to be counted as members of the crowd that appellant targeted. Additionally, it was for the jury to determine whether an approximate distance of 60 feet from the shooter to the crowd was "close range" and endangered any of them. When

[3] Officer Monahan was 20 to 30 feet away, and appellant was acquitted of attempted murder as to him.

a .40-caliber bullet smashes through a finger, then pierces both a metal door and a wooden door before coming to a rest in an occupied apartment, the concept of "close range" and "close crowd" should be solely a matter for the jury to determine, based on all of the evidence. The jury could logically infer that when appellant fired into the group, his malice extended to any of the eight persons within the group whom he perceived to be gang rivals.

Appellant argues that the Court of Appeal majority's reliance on *Smith* and *Chinchilla* to affirm the eight attempted murder convictions was misplaced because in both cases the two victims were positioned one behind the other in the direct line of fire such that the jury could conclude that the defendant intended to kill both victims with a single bullet. Appellant further argues that *Chinchilla* and *Smith* support a rule that a single bullet will support multiple attempted murder convictions *only* when the evidence discloses that "the defendant concurrently intended to strike and kill both victims with the single bullet, such as where two people were situated one behind the other directly in the line of fire." (AOB 12-14.)

Appellant reads these cases too narrowly in two key respects. First, *Chinchilla* and *Smith* support respondent's argument that appellant's act of shooting into a crowd under the belief that the crowd consisted of rival gang members showed an intent to kill any person in that group. (See *People v. Campos* (2007) 156 Cal.App.4th 1228, 1243; see also *Smith, supra*, 37 Cal.4th at pp. 741, 745; *Chinchilla, supra*, 52 Cal.App.4th at p. 690; *People v. Lashley, supra*, 1 Cal.App.4th at p. 945.) Second, in *Smith*, this Court emphasized that its decision was based on a "fact-specific sufficiency of evidence claim" and that under the facts of the case before it, a rational jury could find beyond a reasonable doubt that the defendant "acted with intent to kill *both* the baby and the mother when he shot at them with a large-caliber bullet from close range knowing each was directly in his line of fire." (*Smith, supra*, 37 Cal.4th at p. 747; see also *Chinchilla,*

supra, 52 Cal.App.4th at pp. 690-691 [holding that one shot supported two attempted murder convictions where one officer was crouched in front of the other].) The Court in *Smith* was applying the deferential standard of review for sufficiency claims to the particular facts of that case. Thus, while the *Smith* Court emphasized that the prosecution in that case had to prove that the defendant acted with the specific intent to kill both victims with one shot (*id.* at pp. 739, 743, 747), this emphasis was appropriate in light of the fact that there were only two victims and both were in the direct line of fire. While the general principles relied upon in *Smith* are applicable here, the particulars of *Smith* are of less applicability. The inquiry there, as here, is a fact-specific sufficiency of the evidence analysis, and while *Smith* is instructive, it naturally does not reach a question posed by a different fact pattern.[4] (See *People v. Stone, supra,* 92 Cal.Rptr.3d at pp. 368-369 ["Cases are not authority for matters not considered"].)

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[4] Unlike the evidence in *Smith* (and *Chinchilla*), where there were only two intended victims, the evidence in this case was apparently insufficient to demonstrate that the one bullet fired could have killed all of the (eight) intended victims. Thus, the Court in *Smith* had no occasion to reach the issue presented today – whether a defendant intending to kill with one bullet, and capable of killing any of eight persons in close proximity, can be convicted of eight counts of attempted murder. However, even if *Smith* meant that a theory that one bullet be capable of killing multiple persons was the only way to have multiple attempted murder convictions from one shot, a rational jury could have considered that the bullet nearly severed Officer Fuentes' finger, and that it then travelled on and struck a metal screen door, a wooden door, and a wooden cabinet, before bouncing to a rest. A rational jury could have thus found that those strikes supported at least three attempted murder convictions. Accordingly, if this Court rejects respondent's arguments to uphold all eight convictions, it can remand to the Court of Appeal to determine, based on the evidence, how many persons the jury could reasonably find that this one shot could have killed. (See generally *Stone, supra,* 92 Cal.Rptr.3d at p. 370 [remanding to the Court of Appeal to consider sufficiency issue in light of Court's views].)

Indeed, although the general principles set forth in *Smith* and *Chinchilla* do help resolve the issue presented here, the specifics in this case are more like the facts in *People v. Oates, supra,* 32 Cal.4th 1048, a case where this Court held that Penal Code section 654 did not bar imposing a Penal Code section 12022.53, subdivision (d) enhancement on each of multiple attempted murder convictions. The Court's decision in *Oates* strongly supports the Court of Appeal's view in this case that an intent to kill any of the eight rival gang members, all of whom were endangered by appellant's shot, supports the attempted murder convictions.

In *Oates*, the "defendant fire[d] two shots at a group of five people, but hit[] and injure[d] only one." (*Oates, supra,* 32 Cal.4th at p. 1052.) This was a drive-by shooting and the five people were rival gang members socializing in front of a house. (*Id.* at p. 1053.) This was therefore a case where there were less shots fired than attempted murder convictions, a case where there was no indication that the five victims were in a direct line of fire, as in *Smith* and *Chinchilla.*

In its Penal Code section 654 analysis, the majority in *Oates* found that it was proper to punish the defendant for the five attempted murder convictions and the associated firearm enhancements because there were five separate victims. It first announced, "Attempted premeditated murder qualifies as a crime of violence for purposes of applying this 'multiple victim' exception." (*Oates, supra,* 32 Cal.4th at p. 1063.) It then found, "Under the 'multiple victim' exception to section 654, defendant may be punished *for each of the attempted murder offenses he committed when he fired at the NSO group*." (*Id.* at p. 1066, emphasis added.) The three concurring justices in *Oates* also found the five attempted murder convictions proper. Justice Werdegar stated that the "defendant's punishment would best reflect his culpability were he to receive one subdivision (d) enhancement, for shooting and injuring victim Barrera, and

one subdivision (c) enhancement, for firing his gun, *as to each of the remaining attempted murders for which he was properly convicted*." (*Id.* at p. 1070, emphasis added.)

All seven justices also found that the increased danger from firing at a group of persons warranted increased criminal liability. In this regard, the majority reasoned, "We also explained that a 'person who engages in an urban gun battle is more culpable than one who fires a weapon at an isolated individual' because of the increased 'risk of injury to bystanders.'" (*Oates, supra,* 32 Cal.4th at p. 1060, quoting *In re Tameka C., supra,* 22 Cal.4th at p. 196.) The remaining, concurring justices agreed with this policy rationale for the attempted murder convictions but not for the additional, 25-year-to-life firearm enhancements: "That defendant shot in the direction of and thereby endangered several victims certainly makes his offense worse than that of an assailant who shoots at only a single victim. But that increased culpability would be fully punished by the additional attempted murder convictions . . . ." (*Id.* at p. 1070.)

Thus, *Oates* supports respondent's position that the evidence was sufficient to support the eight attempted murder convictions because (a) appellant intended to kill *any* of the eight persons with his shot, (b) he shot in their direction, (c) they were situated contiguously, and (d) the shot endangered all of them and could have killed any one of them. The need for greater deterrence from firing a shot at a group than "at an isolated individual" justifies the increased liability from multiple attempted murder convictions in this scenario. (See *In re Tameka C., supra,* 22 Cal.4th at p. 196.)

Furthermore, *Oates* quells any concern that this greater liability would lead to disproportionate punishment. To the concern that five section 12022.53 enhancements for two gunshots would be unfair, the *Oates* majority responded that "a trial court can mitigate concerns about

sentencing inequities by imposing concurrent, rather than consecutive, sentences where multiple subdivision (d) enhancements are found true." (*Oates, supra,* 32 Cal.4th at p. 1060.) The same goes for multiple attempted murder convictions where there was the attempt to kill any one of the members of a contiguous group with a single bullet. Like the trial court in *Oates*, and the trial court in this case, a court can run the additional attempted murder sentences concurrently if equitable. (See *id.* at p. 1054 [the trial court in *Oates* imposed concurrent sentences on three of the five attempted murder convictions]; 3CT 656-668 [the trial court in this case imposed concurrent sentences on seven of the eight attempted murder convictions].)[5]

The present inquiry is fact-decisive. There may be instances where the act of endangering the lives of other members of a group by a single shot does not supply an inference of intent to kill any of these others, such as when a defendant has specific animus against one member, but the other members are strangers. For example, suppose a defendant that is embroiled in a bitter child custody dispute with his ex-wife. The defendant fires once

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[5] Appellant may argue that a defendant who fires one shot at eight persons is less culpable than a defendant who fires eight shots at eight persons, and thus that the one-shot defendant should not receive seven additional convictions even with concurrent sentences. But the one-shot defendant is deterred from shooting seven additional shots by the increased likelihood that he will kill at least one of the persons and thus suffer the increased punishment for murder. Thus, it does not promote the protection of the public to withhold this liability from a defendant that shoots once to kill anyone in a group. More fundamentally, for attempted murder, where a defendant has the intent to kill any and all persons in a closely proximate group, there is no legally significant distinction between the single-shot and multiple-shot scenarios. (Cf. *People v. Bland, supra,* 28 Cal.4th at p. 322 ["There is some force to *Birreuta*'s argument that a person who intends to kill two persons and does so is more culpable than a person who only intends to kill one but kills two. But we find no legally cognizable difference between the two persons"].)

at his ex-wife, who is standing at a bus stop in the midst of a group of strangers, narrowly missing her, and missing the rest of the group. Under this hypothetical, the defendant endangered the lives of the others in the crowd, but he had no specific intent to kill anyone but his ex-wife. Thus, attempted murder charges against the other members of the crowd would not stand, because the defendant lacked the specific intent to kill the other members of the crowd, even though he endangered their lives.

Unlike the defendant in this hypothetical, appellant was firing upon the entire group, any member of which he intended to kill with his shot.[6] Furthermore, the jury could reasonably find that all eight victims were closely enough situated that the shot endangered any one of them. Given the limitations of this scenario, there is no danger that by affirming the instant convictions, this Court "opens the door to an unlimited number of attempted murder convictions based on a single act intended to kill a single person." (*Smith, supra*, 37 Cal.4th at p. 754 (dis. opn. of Werdegar, J.).)

C. Moreover, Because There Was Substantial Evidence that Appellant Intended to Kill All Eight Persons, and Committed an Act Beyond Mere Preparation Toward Committing These Killings, There Was Sufficient Evidence to Support All Eight Attempted Murder Convictions

There was substantial evidence that when appellant fired indiscriminately into the crowd of perceived rival gang members, his plan

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[6] This hypothetical example is like Justice Werdegar's hypothetical example illustrating her concern about basing multiple attempted murder convictions upon a single shot against a sole "targeted victim." (*Smith, supra,* 37 Cal.4th at p. 754 (dis. opn. of Werdegar, J.).) As Justice Werdegar recognized in *Oates*, however, multiple attempted murder convictions based on more victims than shots fired are justified in a situation where the shots were "in the direction of and thereby endangered several victims" and where the defendant did not "shoot[] at only a single victim." (*Oates, supra,* 32 Cal.4th at p. 1070 (conc. opn. of Werdegar, J.).)

was not to kill only one person. Instead, a reasonable implication from the evidence was that he intended to kill every person in the crowd and stopped shooting only when he discovered his mistake about the identity of the crowd members. Consequently, even if this Court were to find that a single shot with the intent to kill any of eight contiguous persons, by itself, does not support eight attempted murder convictions, this Court should affirm the Court of Appeal's decision on the alternative ground that the evidence supports the finding that appellant attempted to kill every one of them and took sufficient action toward accomplishing this result. (See *People v. Zapien* (1993) 4 Cal.4th 929, 976 ["No rule of decision is better or more firmly established by authority, nor one resting upon a sounder basis of reason and propriety, than that a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason].)[7]

"An attempt to commit a crime consists of two elements: a specific intent to commit the crime, and a direct but ineffectual act done toward its commission." (Pen. Code, § 21a.) Attempted murder thus requires a direct but ineffectual act done towards accomplishing the intended killing. (*People v. Lee* (2003) 31 Cal.4th 613, 623.) The fact that only a single bullet may have been fired is not dispositive when assessing for sufficiency of the evidence whether a defendant entertained the intent to kill more than one person. (*Smith, supra,* 37 Cal.4th at p. 736.) The shooter may have fired only once and then given up the effort out of necessity or fear, yet his intent to kill remains established because he fired the first time with the

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[7] As respondent explained in Argument B., ante, this Court has evaluated the sufficiency of the evidence of convictions individually, not collectively. In any event, as respondent explains in this Argument C., assuming arguendo this Court evaluated appellant's convictions collectively, the evidence still would suffice to support the convictions. (See Slip Opn. at 1-2 (dis. opn. of Rothschild, J.) [arguing that an appellate court should evaluate the convictions collectively in this context].)

intent to take away the life of a fellow creature. (*Id.* at pp. 741, 745.) A jury could reasonably infer that a defendant who shot indiscriminately into a group for whom he harbored animus specifically intended to kill each and every member of the group; the fact that his efforts were abandoned does not negate his intent to kill any and all members of the group. (See *ibid.*; see also *Bland, supra*, 28 Cal.4th at p. 327 ["The crime of attempt sanctions what the person intended to do but did not accomplish . . ."].) As the Court of Appeal put it in *People v. Chinchilla*, "'The fact that the shooter may have fired only once and then abandoned his efforts out of necessity or fear does not compel the conclusion that he lacked the animus to kill in the first instance.'" (*Chinchilla, supra*, 52 Cal.App.4th at p. 690.)

Here, appellant's action of shooting once into a crowd supports all eight counts of attempted murder. Appellant had the means – a .40-caliber Glock handgun – to put into action his plan of killing every member of the crowd that he fired into. Further, at the time appellant fired the shot, he was driving slowly, and he sped off only after realizing that it was the police that he was shooting at rather than gang rivals. (1RT 47-48, 67-68, 74, 82, 102, 109; 3RT 989-990, 995; 4RT 1161, 1222; 5RT 1552.) Also, the gang expert testified that appellant's shooting was done for the benefit of the gang, and it presumably would have benefitted the gang even more if he killed all the perceived gang rivals rather than just one. Thus, the jury could reasonably infer that appellant intended to kill all eight persons, and that were it not for his realizing, after the first shot, that they were police officers, appellant would have tried to shoot and kill the entire group.

Similarly as in *Chinchilla*, the fact that appellant fired only once and then abandoned his efforts out of fear does not compel the conclusion that he lacked the animus to kill every member of the crowd in the first

instance.[8] In other words, the crime of attempted murder as to each of his victims was completed when appellant fired that first shot: he did not need to fire seven more times, since the overt act of firing the first shot put his plan into action. (See *People v. Superior Court* (*Decker*), *supra*, 41 Cal.4th at p. 7.) Further, that appellant did not have the apparent ability to kill all eight people with one bullet does not negate that the second element of the crime of attempted murder is satisfied by a *single* direct but ineffectual act that goes beyond mere preparation and shows that the perpetrator is putting his plan into action.[9] (*Ibid.*; see also *In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1383-1384 ["a defendant may be convicted of an attempt to commit a crime where there is sufficient evidence to demonstrate that the means used by the defendant, together with the surrounding circumstances, made the intended crime apparently possible"].)

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[8] Appellant argues that the evidence at most establishes that he intended to kill only one person within the crowd. He further argues that because the doctrine of transferred intent does not apply to attempted murder, the intent to kill one person does not transfer to the other persons in the crowd. (AOB 12.) Respondent does not dispute appellant's latter assertion that the transferred intent doctrine does not apply to the crimes at issue here (*Bland, supra,* 28 Cal.4th at pp. 317, 327), but does dispute that a reasonable jury could not have concluded that appellant intended to kill everyone in the crowd, whom he believed to be gang rivals.

[9] This conclusion holds even when the facts are changed. Take, for example, the case of an employee who has recently been fired and is disgruntled. He returns to the workplace with a gun, and heads for his supervisors' offices. Upon reaching the area, he sees a group of persons and, believing them to be a group of supervisors, fires once at them, wounding one. However, before he can fire again, he realizes that he is not firing upon supervisors, but upon a group of visitors to the workplace. He therefore stops firing and flees. A reasonable jury could rationally infer that the employee specifically intended to kill each supervisor in the group, that is, that he "desired" the death of each supervisor in the group, and that he abandoned his efforts to kill only when he discovered his mistake. Thus, the evidence would support multiple attempted murder convictions.

The dissenting opinion below argued that when considered collectively, a single bullet "cannot support a reasonable inference that the shooter intended to kill eight people or had the apparent ability to kill all eight people." (Slip. Opn. at 1 (dis. opn. of Rothschild, J).) However, again, it is immaterial that appellant's single shot apparently could not have killed all eight people. As set forth above, a rational jury could have concluded that when appellant fired a Glock .40 into the midst of the crowd, he had the apparent ability to continue firing the gun until he had killed everyone in the crowd. (1 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000), Elements, § 61, p. 269 [the test of apparent possibility lacks a "fixed meaning . . . and the proof is generally deemed sufficient if the *means* used by the defendant, and the surrounding *circumstances* make the crime *apparently possible*"].) Because there was sufficient evidence that appellant wanted to kill every one of the eight perceived gang members that he shot at, and because there was sufficient evidence that he would have shot them all had he not realized that they were police officers, the convictions should stand.

Nor can appellant escape liability on the ground that it apparently was "factually impossible" for him to kill all eight gang members with one bullet. (See *People v. Camodeca* (1959) 52 Cal.2d 142, 147 ["factual impossibility" is immaterial to attempted grand theft by false pretenses]; *People v. Valdez* (1985) 175 Cal.App.3d 103, 108-109 ["There is ample authority a defendant can be convicted of the attempt to commit most crimes even though it was *factually impossible* for him to have committed the crime itself"]; see also *People v. Grant* (1951) 105 Cal.App.2d 347, 356 [approving the jury instruction, "It is immaterial whether or not the crime attempted was impossible of completion if you find that it was apparently possible of completion to the defendant so acting with the necessary intent"].)

The case of *People v. Reed* (1996) 53 Cal.App.4th 389 illustrates that an attempt conviction is not foreclosed on the basis that it was factually impossible for the defendant's act, by itself, to complete the intended crime. In *Reed*, the defendant was convicted of attempted molestation of a child under the age of 14 years after he had arranged with an undercover police officer to meet and have sexual relations with the officer's two "imaginary" daughters, ages 12 and 9. The defendant contended on appeal that "there can be no attempt to commit child molestations where the victim is imaginary because appellant could not fulfill all of the elements of the offense." (*Id.* at p. 396.)

The court in *Reed* rejected the claim. First, citing Penal Code section 26, which provides that a person is incapable of committing a crime if he or she acts under a mistake of fact that disproves any criminal intent, the Court of Appeal observed that numerous courts had ruled that "'factual impossibility is not a defense to a charge of attempt.'" (*People v. Reed, supra*, 53 Cal.App.4th at p. 396; see also *People v. Peppars* (1983) 140 Cal.App.3d 677, 687, fn. 5 [the term "'factual impossibility' denotes conduct where the objective is proscribed by the criminal law, but a circumstance unknown to the actor prevents him from bringing it about"].) The Court of Appeal held that factual impossibility therefore did not vitiate the defendant's attempt to sexually molest the children, finding that it was the reason the defendant's act was ineffectual, but that it did not change that the defendant carried out an act beyond mere preparation. (*Reed, supra,* 53 Cal.App.4th at p. 399.)

The "factual impossibility" of killing eight people with one bullet in this case does not change the fact that appellant did an act beyond mere preparation toward committing eight counts of attempted murder. Substantial evidence demonstrated that his plan was thwarted because the circumstances were not as he perceived them: he was not firing into a

group of hated gang rivals, but into a group of police officers. Only when he realized his mistake did appellant abandon his efforts. Under these circumstances, there was sufficient evidence that appellant intended to kill all eight persons and took an ineffectual act toward this result. As a consequence, the evidence supported appellant's eight attempted murder convictions.

CONCLUSION

Respondent respectfully requests that this Court affirm the decision of the Court of Appeal upholding appellant's convictions of eight counts of attempted murder.

Dated: June 3, 2009

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
PAMELA C. HAMANAKA
Senior Assistant Attorney General
VICTORIA B. WILSON
Supervising Deputy Attorney General
LARRY M. DANIELS
Supervising Deputy Attorney General

MARY SANCHEZ
Deputy Attorney General
Attorneys for Respondent

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CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER BRIEF ON MERITS uses a 13 point Times New Roman font and contains 8,476 words.

Dated: June 3, 2009

EDMUND G. BROWN JR.
Attorney General of California

MARY SANCHEZ
Deputy Attorney General
Attorneys for Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***People v. Rodrigo Perez***
No.: **S167051**

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Eric Robert Larson
Attorney at Law
330 "J" Street, Suite 609
San Diego, CA 92101
(Counsel for Appellant Perez)

Hon. Steve Cooley, District Attorney
Los Angeles District Attorney's Office
Attn.: DDA Stephanie Sparagna
210 West Temple Street, Suite 18000
Los Angeles, CA 90012-3210

John A. Clarke
Clerk of the Court
Los Angeles County Superior Court
111 N. Hill Street
Los Angeles, CA 90012
For delivery to:
Hon. Judith L. Champagne, Judge

California Appellate Project (LA)
520 South Grand Avenue, 4th Floor
Los Angeles, CA 90071

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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 June 3, 2009, at Los Angeles, California.

M. O. Legaspi
Declarant

Signature

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