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FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

APR 03 2024

STEPHANIE CAMERON
Stephanie Cameron

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SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF TULARE, VISALIA DIVISION

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

JESUS AARON GAYTAN,

Defendant.

CASE NO. VCF120624B-03

PEOPLE'S POST TRIAL BRIEF IN
REPLY TO DEFENSE'S POST
TRIAL BRIEF

DEPT: 10
DATE: 4/4/24
TIME: 8:30 A.M.

L Defendant Committed Implied Malice Murder Because He Knew That His Acts [carjacking] Were Dangerous to Human Life and Committed the Acts with Conscious Disregard for Human Life.

Defendant was convicted by the jury, among other charges and enhancements, of first-degree murder, and the jury further found that the defendant committed the murder while engaged in the commission or attempted commission of robbery, carjacking and burglary. The jury also found the defendant was a major participant who acted with reckless disregard for human life.¹ The trial court instructed the jury that "defendant acts with reckless indifference to human life when the defendant knows or is aware that his acts involve a grave risk of death to an innocent human being." [R.T. pg. 1152 L 14-17]. Defendant's conviction for the underlying felony was based on aiding and abetting theory of liability:

You cannot find the special circumstances to be true unless you are satisfied beyond a reasonable doubt that such defendant with the intent to kill aided, abetted, counseled,

¹ Since this finding was pre 2015 (*Banks and Clark*), the case was remanded to trial court even though intent to kill was required in the alternative, in effect, to determine the truth of the special circumstance (major participant with reckless disregard) based on the factors in *Banks and Clark*.

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commanded, induced, solicited, requested, or assisted any actor in the commission of the murder in the first degree, or with reckless indifference to human life and as a major participant, aided, abetted, counseled, commanded, induced solicited, requested, or assisted in the commission of the crime of attempted carjacking and/or attempted robbery and/or burglary, which resulted in the death of a human being, namely, S.R. [R.T. pg. 1152 L. 1-13]

The jury also convicted the defendant of attempted carjacking in count two. The issue that the resultant death was during the defendant committing attempted carjacking has been decided by the jury and the issue is res judicata. Further the issue of the subjective knowledge of the defendant that his acts involve a grave risk of death when he engaged in the attempted carjacking is also res judicata. The defendant committed implied malice murder² because the defendant, knowing that his acts were dangerous to human life, he deliberately armed himself and provided a gun to his cohort and with conscious disregard embarked on his attempt to carjack along with his gang member cohorts all armed knowing that at least one of the cohorts wished to jack a car or do a drive-by for whose gun they went an extra step of obtaining ammunition. Defendant's claim of being under the influence or asleep is contradicted by the observation of the arresting and interviewing officers and Juan Mejia. Juan Mejia testified that the defendant was in the front passenger seat when he returned to the get-away car and that there were three people in the cab of the pickup truck during the carjacking.³ The trial court found defendant's claim of being under the influence of alcohol not credible after the defendant's testimony at the motion hearing to support his claim of Miranda violation which was rejected by the court. [R.T. pg. 142 L. 15-24]

Defendant's act of attempted carjacking, a dangerous felony, knowing that it is dangerous to human life and with conscious disregard of that fact proceeding to its commission,

² The defendant had implied malice if:

1. (He/She) intentionally (committed the act/[or] failed to act);
2. The natural and probable consequences of the (act/[or] failure to act) were dangerous to human life;
3. At the time (he/she) (acted/[or] failed to act), (he/she) knew (his/her) (act/[or] failure to act) was dangerous to human life;

AND

4. (He/She) deliberately (acted/[or] failed to act) with conscious disregard for (human/ [or] fetal) life.

Judicial Council of California Criminal Jury Instruction 520, Judicial Council of California Criminal Jury Instruction 520

³ Though he claimed he couldn't tell who all was in the cab.

1 constitutes implied malice murder. The theory of implied malice murder remains valid
2 notwithstanding the recent changes effected by Senate Bill No. 1437 (SB 1437) and senate
3 Bill No. 775 (SB 775) [citations omitted] Pursuant to his theory “and aider and abettor who
4 does not expressly intend to aid a killing can still be convicted of second degree murder if the
5 person knows that his or her conduct endangers the life of another and acts with conscious
6 disregard for life. *People v. Gentile* (2020) 10 Cal. App 5th 830 at 850) and canon of
7 constitutional doubt did not preclude court from finding of guilt based on theory that was not
8 presented at trial (*People v. Terry Schell* (2022) 84 Cal. App. 5th 437). Accordingly, the
9 defendant committed murder with malice aforethought and is thus disqualified.

10 **II. New Evidence Further Proves That the Defendant Was A Major Participant**
11 **Who Acted With Reckless Disregard.**

12 If the court does not find that the defendant committed implied malice murder, the
13 evidence proves beyond a reasonable doubt that the defendant was a major participant in the
14 carjacking and acted with reckless disregard for human life.

15 Mr. Mejia testified for the first time at the evidentiary hearing of this matter, which
16 constitutes new evidence. Gang evidence⁴ was presented which is also new evidence.

17
18 Mr. Mejia testified, though reluctantly, that (1) defendant got out the car when they
19 arrived at the scene, (2) when he returned to the car, Juanita Marquez was in the driver’s seat,
20 contradicting Juanita Marquez statement, (3) that three people were in the cab of the pickup
21 truck during the carjacking, and (4) that the defendant provided him the murder weapon. The
22 gang evidence further proves the that perpetrators were members of a criminal street gang
23 whose primary activity is, among other crimes, carjacking and murder. As testified to by the
24 gang expert, Officer Alavarez, gang members are expected to take part in crimes which they
25 commit in groups and failure to do so is incompatible with the gang’s expectation and may
26 subject the offender to discipline. This carjacking was not a crime of opportunity. The four
27 gang members planned it and even obtained ammunition for their guns and set out to execute
28 a drive-by or carjacking.

⁴ Defense speculates as to why gang evidence was not presented to the jury. That is not evidence. The Judge’s comments regarding probation report does not constitute res judicata on its face and specially in the face of new evidence presented.

1 The people have already submitted a brief arguing that the defendant met the factors
2 for major participation and reckless disregard before the testimony of Mr. Juan Mejia. Mr.
3 Mejia's testimony further supports finding of major participation and reckless disregard
4 because he identified the defendant as the person who provided him the gun, and even though
5 Mr. Mejia attempted to minimize his participation as well as the defendant (co- gang
6 member), he admitted that the defendant got out of the car, three people were in the cab of the
7 truck, and that Juanita Marquez was the getaway driver. At the time of defendant's interview,
8 the defendant would simply repeat the questions when the officer asked him about his role in
9 the carjacking which further shows his consciousness of guilt. [Exhibit 61A of trial
10 [defendant's statement]].

11 Again, the relevant factors for determination of reckless indifference include (*People v.*
12 *Clark* (2016) 63 Cal. 4th 522 at 618-623) :

- 13 • Did the defendant use or know that a gun would be used during the felony? Yes.
14 Defendant was armed as everyone else and provided the gun to the shooter.
- 15 • Was the defendant physically present at the crime? Yes. He was one of the three in the
16 Cab of the pickup truck.
- 17 • Did he or she have the opportunity to restrain the crime or aid the victim? Yes, as the
18 victim was shot and failed to flee with the perpetrators. The shooting of the victim
19 paved the way for Mejia and the defendant to flee. The perpetrators knew beyond a
20 reasonable doubt that the victim was shot. Jason Parks testified that the victim just
21 dropped. It is not required for the people to show that any efforts that the defendant
22 and his cohorts could have given would have been lifesaving. The fact is none even
23 attempted. They fled the scene.
- 24 • What was the duration of the interaction between the perpetrators of the felon and the
25 victim? Three of the defendants were engaged in an altercation with the victims of the
26 carjacking until the victim was shot outside the truck. The defendant did not verbally
27 or otherwise discourage his cohorts from using the firearms. The fact that the group
28 took time to go get ammunition for the gun shows that the carjackers envisioned
 violent confrontation with the victims and with disregard to human life the defendant
 engaged in the carjacking.

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- What was the defendant's knowledge of his or her confederate's propensity for violence or likelihood of using lethal force? Defendant had actual knowledge. Defendant's cohort, who was a gang member, had announced his intention to do a drive by or carjacking. Defendant was there when they obtained ammunition for the gun. Defendant knew that his cohort was predisposed to use lethal force when he joined in the crime.
- What efforts did the defendant make to minimize the risks of violence during the felony? Nothing. In fact, the defendant provided the gun and was present when the group went to get ammunition for the gun.

No one of these considerations is necessary, nor is any of them necessarily sufficient. (*Id.* at 618).

CONCLUSION:

Based on the foregoing, the people respectfully request that the court deny defendant's petition because he committed implied malice murder or in the alternative was a major participant who exhibited reckless disregard for human life.

Dated: April 2, 2024

Respectfully submitted,

TIM WARD
DISTRICT ATTORNEY

By: 
MITCH NIAYESH
DEPUTY DISTRICT ATTORNEY

STATE OF CALIFORNIA, COUNTY OF TULARE

The undersigned declares:

I am a citizen of the United States. My business address is 221 S. MOONEY BLVD., RM 224, VISALIA, California 93291. I am over the age of eighteen years and not a party to the within action.

On the date set forth below, I caused a true copy of the within

JESUS AARON GAYTAN
VCF120624B-03

PEOPLE'S POST TRIAL BRIEF IN REPLY TO DEFENSE'S POST TRIAL BRIEF

to be served on the following parties in the following manner:

HAND DELIVERED E-MAIL FAX

To: **PUBLIC DEFENDER**
PUBLICDEFENDERCLERICAL@TULARECOUNTY.CA.GOV

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on April 3, 2024, at VISALIA, California.


Josefina Diaz
Legal Office Assistant