

No. S044739 - CAPITAL CASE

In the Supreme Court of the State of California

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

v.

ANTHONY BANKSTON,
Defendant and Appellant.

Los Angeles County Superior Court, Case No. VA007955
The Honorable Nancy Brown, Judge

THIRD 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
STACY S. SCHWARTZ (SBN 191971)
Deputy Attorney General
STEVEN E. MERCER (SBN 196911)
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
Telephone: (213) 269-6126
Fax: (916) 731-2122
DocketingLAAWT@doj.ca.gov
Steven.Mercer@doj.ca.gov
Attorneys for Respondent

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INTRODUCTION AND SUMMARY OF ARGUMENT

In his second supplemental opening brief, Bankston claims that discriminatory language was used at trial in violation of California's Racial Justice Act of 2020 ("RJA" or "the Act"). Bankston argues that guilt-phase testimony from gang experts about "hardcore gang members," and an expert's opinion about the culture of "Black gangs," violated the RJA. He further contends that the prosecutor violated the RJA during the penalty phase argument by using racially discriminatory language, including a comparison of Bankston to a "Bengal tiger."

Bankston is not entitled to reversal of his convictions based on his allegation of RJA violations at the guilt phase trials. The gang experts' testimony did not violate the RJA, and even if it did, the comments were harmless beyond a reasonable doubt in light of Bankston's heinous crimes and the overwhelming evidence of his guilt.

However, it appears that Bankston is entitled to have his death sentence vacated under the RJA in light of the prosecutor's penalty phase arguments. Therein, the prosecutor recounted the fable of the "Bengal Tiger," and compared Bankston to the fearsome predator at the center of the story. The RJA expressly prohibits language that compares defendants to animals, and the legislative history of the RJA specifically highlighted prosecutors' comparisons of defendants to "Bengal tigers" as an example of a racist trope that the Act was intended to address and eradicate. Because the record does not demonstrate beyond a reasonable doubt that the prohibited comments did not contribute to the jury's death verdict, Bankston's death sentence should be vacated

and invalidated, and Bankston must be sentenced instead to life in prison without the possibility of parole.

ARGUMENT

BANKSTON’S CONVICTIONS SHOULD BE AFFIRMED, BUT THE DEATH SENTENCE SHOULD BE VACATED IN LIGHT OF THE “BENGAL TIGER” ANALOGY USED DURING THE PENALTY PHASE

A. The California Racial Justice Act of 2020

Effective January 1, 2021, the RJA codified in a scheme of interrelated statutes in the Penal Code (Pen. Code, §§ 745, 1473, subd. (f), 1473.7, subd. (a)(3))¹ the fundamental principle that “[t]he state shall not seek or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or national origin.” (§ 745, subd. (a).) The Act sets forth four categories of conduct, any of which, if proven by a preponderance of the evidence, “is enough to ‘establish’ a violation of section 745, subdivision (a).” (*Young v. Superior Court* (2022) 79 Cal.App.5th 138, 147.) Bankston alleges on appeal that his case falls into one of those categories:

During the defendant’s trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant’s race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant’s race, ethnicity, or national origin, whether or not purposeful.

(§ 745, subd. (a)(2); SSAOB 39-40.)

The Act defines “[r]acially discriminatory language” to mean “language that, to an objective observer, explicitly or

¹ Undesignated statutory references are to the Penal Code.

implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references the defendant's physical appearance, culture, ethnicity, or national origin.” (§ 745, subd. (h)(3).)

The interpretation of section 745 is subject to de novo review. (*People v. Lashon* (Cal. Ct. App., Jan. 8, 2024, No. A163074) 2024 WL 79926, at *2; *People v. Burgess* (2022) 86 Cal.App.5th 375, 382.) A reviewing Court must first look at the statutory language based upon the customary meaning of that language; “[t]he words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. If the statutory language is susceptible of more than one reasonable interpretation, [the court] must look to additional canons of statutory construction to determine the Legislature’s purpose. Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.” (*Carmack v. Reynolds* (2017) 2 Cal.5th 844, 849-850 [citations and internal quotation marks omitted].)

In its initial previous form, the RJA only applied “prospectively in cases in which judgment ha[d] not been entered prior to January 1, 2021.” (Former § 745, subd. (j).) As part of Assembly Bill No. 256, which became effective January 1, 2023, the Legislature amended subdivision (j) to provide, in pertinent

part: “This section applies as follows: (1) to all cases in which judgment is not final[; and] (2) . . . [T]o all cases in which . . . the petitioner is sentenced to death” (§ 745, subd. (j); Stats. 2022, ch. 739 (Assem. Bill 256), §§ 2, 3, eff. Jan. 1, 2023 [amending § 745, subd. (j), § 1473, subd. (f)].)

Assembly Bill No. 1118, which became effective January 1, 2024, further amended section 745, subdivision (b) to provide: “For [RJA] claims based on the trial record, a defendant may raise a claim alleging a violation of subdivision (a) on direct appeal from the conviction or sentence. The defendant may also move to stay the appeal and request remand to the superior court to file a motion pursuant to this section.” (Assem. Bill No. 1118 (2023-2024 Reg. Sess.) § 1, eff. Jan. 1, 2024.)

Thus, beginning January 1, 2024, amended section 745, subdivision (b) authorizes Bankston, who was tried before enactment of the RJA, to raise his record-based RJA claims on direct appeal, as his letter brief dated December 20, 2023, indicates he wishes to do. (Letter Brf. 2.) In light of this recent change in law, the procedural arguments made in respondent’s second supplemental brief no longer apply. (See SSRB 24-35.) Bankston’s RJA claims, to the extent that they are based on the trial record, are now cognizable on direct appellate review. (See § 745, subd. (b).)

In cases where judgment was entered prior to January 1, 2021, a violation of section 745, subdivisions (a)(1) or (a)(2) is also reviewed for prejudice. If the State can prove, beyond a

reasonable doubt, that the violation did not contribute to the verdict, relief under the RJA is unavailable. (§ 745, subd. (k).)

B. The gang experts' guilt-phase testimony did not violate the Racial Justice Act

Bankston contends that testimony from the gang experts at the guilt phase trials violated section 745, subdivision (a)(2) and warrants reversal of his convictions and sentence. (SSAOB 44-45.) Not so. The expert testimony to which Bankston now objects was race-neutral, and even assuming that it ran afoul of the RJA, the testimony was harmless beyond a reasonable doubt.

Bankston's RJA-based challenge to the validity of his convictions is cabined to the testimony of the People's two gang experts: Deputy Andrew MacArthur, a gang expert assigned to the Operation Safe Streets gang unit, and Compton Police Lieutenant Reginald Wright, a gang expert who had been a Los Angeles County Sheriff's gang homicide investigator in 1991. (17RT 2003-2004; 20RT 2568-2572; see SSAOB 44-45.) Their testimony is described in detail in the original respondent's brief. (See RB 9-15 [first guilt-phase trial], 33-40 [second guilt-phase trial].) Bankston contends that the following two aspects of this testimony violated the RJA: (1) the experts' use of the term "hardcore gang members" at both guilt-phase trials; and (2) Lieutenant Wright's statement defining "hardcore gang members" at the second guilt-phase trial as "the part of the group that is actively involved in the criminal activities . . . violent activities, anything . . . to further the gang's prominence for that matter, usually outward especially with Black gangs because it's all about showing – to get respect, it's all about showing how – for

a term they use – down, . . . you get[.]” (43RT 5552; SSAOB 44-45.) These statements do not warrant reversal of Bankston’s convictions.

The RJA defines “[r]acially discriminatory language” to mean language that, “to an objective observer, explicitly or implicitly appeals to racial bias[.]” (§ 745, subd. (h)(4).) Here, the challenged expert testimony referencing “hardcore gang members” is race-neutral and is not language that explicitly or implicitly appeals to racial bias. The gang experts did not suggest that the term “hardcore gang member” referred to African-Americans or to members of any particular race. And while Bankston asserts that the label is “racially charged” (SSAOB 44), this Court and the Courts of Appeal have routinely used the label just as the expert witnesses did here—as shorthand to describe a gang member who, like Bankston, is active and committed to the gang. (See, e.g., *People v. Powell* (2018) 6 Cal.5th 136, 180 [quoting gang expert’s assessment that a gang’s “main players” are members who are “a little more hardcore”]; *In re Champion* (2014) 58 Cal.4th 965, 995 [noting that testimony presented at reference hearing in capital case “confirmed that petitioner had been an active, hardcore gang member from the age of 12”]; *People v. Watson* (2008) 43 Cal.4th 652, 663 [noting that Lieutenant Wright described the Santana Block Crips in that case “as a violent street gang whose hardcore members wear the letters ‘SBC’ on their caps, belt buckles and jackets, or who may have tattoos referring to the gang”]; *People v. Franklin* (2016) 248 Cal.App.4th 938, 946 [describing gang

detective's opinion that committing a crime of violence "gives the gang member notoriety and shows that he is a hardcore gang member willing to put in work"].)

And Bankston himself repeatedly used the term when arguing to the jury about his level of involvement in the gang. For example, Bankston disputed that a "C" in a gang-related drawing had been crossed out, and argued, "To me that would give a reasonable doubt that this person is not a hardcore gang member, that this person did not commit these crimes." (24RT 2292 [first guilt trial]; see also 3011 [same].) Bankston also used the allegation about his status to contend that similarly dedicated Crips members "might be inclined to have a motive or a bias based on the fact that a suspect in this case is, in fact, an alleged hardcore participant of a Blood gang." (24RT 3013.) On this record, therefore, the jury would have considered the term "hardcore gang member" in the manner that both parties did at trial: as a race-neutral descriptor of a committed and active gang member.

Notably, Bankston does not cite any caselaw or anything from the record to support his characterization of this frequently-used label as "racially charged," and instead relies on his own argument from his opening brief, in which he challenges the admissibility of his album of gang-related photos and writing. (See SSAOB 44, citing SSAOB 27-30.) In short, Bankston has not demonstrated that the race-neutral label "hardcore gang members," as used by the gang expert witnesses in this case (and

countless others), constitutes language that, to an objective observer, explicitly or implicitly appeals to racial bias.

Bankston's claim concerning Lieutenant Wright's statement at the second guilt trial—that the commission of crimes and violent acts by gang members to further a gang's prominence was important “especially with Black gangs because it's . . . all about showing how – for a term they use – down, . . . you get”—also fails to establish an RJA violation. As discussed below, the statement is based on Wright's experience as a gang expert and was not an appeal to racial bias under section 745. And Bankston, who is Black and who represented himself at trial, used virtually identical language minutes later when he asked Wright on cross-examination to opine about gang culture, “specifically dealing with Black gangs.” (See 43RT 5556.)

Lieutenant Wright's statement came near the end of lengthy re-direct examination about Bankston's gang membership and the makeup and culture of the Bloods gang, and was made in response to questions about Bankston's level of commitment and involvement. (43RT 5551-5553.) At this point in the second guilt-phase trial, the nature and structure of the Bloods and Crips was well-established, as was the fact that Bankston was a proud and committed Blood and self-identified “Crip killer.” (See, e.g., 40RT 5085-5088, 5091, 5139-5140, 5144, 5146, 5167, 5171, 5180-5181; 43RT 5551-5553, 5557-5559; 49RT 6118.)

Shortly after Lieutenant Wright made the comment, Bankston cross-examined him extensively about what constitutes an “active member” of a criminal street gang, and whether he

believed Bankston remained an active Bloods member at the time of trial. (See 43RT 5559-5562.) Bankston also pressed Wright on whether the author of the gang writings found in Bankston's album was a "person committed to violence." (43RT 5563.) Bankston then turned to questioning Wright about his testimony about "gaining status or stature within an individual gang," and asked, "You mentioned one of those methods as being a person that would shoot people, correct?" (43RT 5564-5565.) When Wright confirmed that shooting people "would be one method, yes," Bankston elicited testimony that gang members could also "get stature" by committing additional crimes or acts of violence. (43RT 5565.) Bankston further elicited testimony from Wright that gang stature also could be earned through non-violent means, including, in Bankston's words, by "provid[ing] a place to relax, also a place to have social events, parties, et cetera." (43RT 5556.)

Bankston next had Lieutenant Wright confirm, based on his experience with gangs, that Wright was someone who was "aware of the subculture of gangs." (43RT 5556.) Bankston then asked Lieutenant Wright to testify about the subculture of "Black gangs" in particular. Bankston asked, for example, "Would that subculture, *specifically dealing with Black gangs*, stem directly from that gang's culture?" (43RT 5556, italics added.) When Wright indicated that he was a bit "vague" on what Bankston was asking, Bankston had Wright confirm, in Bankston's words, that the author of the gang-related writing "was aware of his African heritage," and that the "activities of gangs as a

subculture . . . would . . . stem directly from his culture.” (43RT 5556-5557.)

Bankston is hard-pressed to explain why Lieutenant Wright’s opinion about the importance of gaining stature “especially with Black gangs” was racially discriminatory, or warrants reversal of his convictions, when Bankston himself discussed the influence of his African-American heritage on the culture of his gang and directly asked Wright to opine about gang subculture, “*specifically dealing with Black gangs.*” (43RT 5556, italics added.)

Under these circumstances, Lieutenant Wright’s single reference to “Black gangs” does not violate the prohibitions of the RJA. The statement was proper opinion testimony based on Wright’s experience as a gang expert and must be viewed in the context of both experts’ broader testimony about the nature and core culture of the Bloods and the Crips, i.e., the two rival street gangs at issue in this case. There was no dispute at trial that the Bloods and the Crips were comprised of Black gang members, that the gangs were engaged in a violent rivalry, and that their members committed violent crimes to show their commitment to the gang and to elevate their gang’s status. Further, the fact that Bankston himself directed Wright to give opinion testimony “specifically dealing with Black gangs” dooms his claim that Wright’s expert opinion testimony about the culture of “Black gangs” constituted racially discriminatory language in violation of section 745, subdivision (a)(2).

In short, as to the gang experts’ use of the term “hardcore gang members,” and Lieutenant Wright’s single reference to “Black gangs,” Bankston has not proven by a preponderance of the evidence that these commonly-used descriptors are racially discriminatory (§ 745, subds. (a)(2), (h)(4)), nor that the experts “exhibited bias or animus towards the defendant because of the defendant’s race, . . . whether or not purposeful.” (*Ibid.*) Bankston has thus failed to demonstrate a violation of the RJA during the guilt phase trials.

C. Any assumed violation of the Racial Justice Act at the guilt phase trials was harmless beyond a reasonable doubt

Even if Bankston has proven by a preponderance of the evidence that the challenged aspects of the gang experts’ testimony is now prohibited by the RJA, reversal of his convictions is not warranted because the admission of the testimony was harmless beyond a reasonable doubt (See § 745, subd. (k).)²

² Although respondent addresses the impact of the alleged RJA violations at both guilt-phase trials pursuant to section 745, subdivision (k), Bankston’s prejudice argument appears to be limited to the second guilt-phase trial. Although he contends that the term “hardcore gang member” is “racially charged,” he argues that it took “on an explicit racial meaning in the second guilt-innocence trial, after the first trial ended with a hung jury on several counts.” (SSAOB 44-45.) Further, Bankston’s enumerated argument that addresses remedies for the alleged RJA violations is focused exclusively on Lieutenant Wright’s opinion testimony from the second guilt phase trial and the prosecutor’s penalty-phase argument. (See AOB 49-53.)

As for the guilt-phase trials, the gang experts' use of the term "hardcore gang member" was not extreme and did not improperly impact the verdicts. As alluded to above, it was a phrase commonly used throughout trial by both sides; indeed, Bankston used the term multiple times himself. There was no testimony that limited "hardcore gang members" to a particular race, and no evidence that jurors perceived the term that way.

Turning to Lieutenant Wright's testimony, a single opinion about the importance of putting in work, "especially with Black gangs"—at the second guilt-phase trial only—would not have impacted the jury's verdict for similar reasons. As noted, Bankston himself elicited virtually identical testimony from Wright, asking him to render opinions about gang culture, "specifically dealing with Black gangs." (See 43RT 5556.) If anything, the jury would have understood the reference to "Black gangs" in the same way that Bankston used it: as an accurate and descriptive alternative to saying "the Bloods and the Crips gangs," i.e., the rival gangs at issue in the case. There is nothing in the record suggesting the jury perceived the term as appealing to racial bias.

Further, as discussed in detail in the original respondent's brief, the evidence against Bankston at both guilt phase trials was strong. (See RB 3-17 [discussing evidence from first guilt trial]; RB 20-41, 208-209 [discussing evidence from second guilt trial].) At the first guilt phase trial, two eyewitnesses identified Bankston as the shooter; the shooter's description was immediately recognized as that of "Ant Dog," i.e., Bankston, and

Bankston was arrested driving the car that matched the suspect's car and with the murder weapons in his possession. (See 15RT 1744-1746; 16RT 1936-1939, 1942-1943, 1947-1948, 1953, 1980-1981; 19RT 2396-2397; 17RT 2124; 21RT 2700, 2712.)

Bankston's insinuations to the jury that someone named "Nate" was the actual shooter, and that the shooting was not premeditated, were simply not credible. Additionally, the fact that the jury did not convict Bankston at the first trial for the Sanchez murder (count 1), the Johnson attempted murder (count 6), or the assault with a deadly weapon on Linda Jones (count 4) demonstrates that the jury's passions were not inflamed by an appeal to racial bias. (See *People v. Stewart* (1985) 165 Cal.App.3d 1050, 1057 [jury's failure to convict on all counts demonstrated its ability to compartmentalize the evidence]; see also *Park v. California* (9th Cir. 2000) 202 F.3d 1146, 1150 [same].)

The evidence against Bankston at the second guilt phase trial was also strong, as discussed in detail in the original respondent's brief. (See RB 20-41.) An eyewitness (Melendez) identified Bankston as the man who shot at him and Sanchez. (35RT 4298-4300, 4302, 4319, 4321-4322.) Melendez saw Bankston cock the assault rifle, and the men made eye contact. (35RT 4302.) Lopez and Franco were behind the shooter's car, which they identified as similar to Bankston's. (37RT 4527; 39RT 5016.) Franco identified Bankston as a man who looked like the shooter from a six-pack photographic lineup in 1994, and again in the courtroom during trial. (39RT 5012-5016; 40RT 5054-5055,

5063, 5065-5066.) Bankston's friend Torrez testified that Bankston came to his house the next day and bragged about the shooting and about "putting in work" for his gang. (37RT 4558-4560, 4573-4574.) Bankston said he had shot a Compton Chicago Gang member in that gang's territory and had used an AK-47 assault rifle. (37RT 4562-4563.) Torrez testified that Bankston had the AK-47 with him, which Torrez identified as the same assault rifle that police found in Bankston's lap during the traffic stop. (37RT 4584 [People's Exh. 1], 4608-4609.)

At the second trial, Benjamin and Linda Jones also both gave credible eyewitness accounts of the shooting and identified Bankston as the shooter. (38RT 4775-4776, 4805-4806, 4816-4817, 4819, 4826-4828.) Linda testified that after seeing Bankston essentially execute Benson with a close-range gunshot, Bankston aimed the gun at her with both hands. She testified that she and another person "jumped into the street" (38RT 4811-4812; 39RT 4865-4866), that Bankston fired, and that she "almost got hit" (38RT 4811). And the fact that the jury acquitted Bankston of the attempted murder of Ernest Johnson (count 6) further indicates that the jury's passions were not inflamed by an appeal to racial bias at the second guilt-phase trial.

Importantly, any general insinuations about the propensity for violence by a "hardcore gang member" at both trials, or by a member of a "Black gang" at the second guilt trial, was inconsequential compared to the overwhelming evidence of Bankston's personal propensity for violence, which was established at both guilt phase trials with extensive testimony

and documentary evidence concerning his previous violent acts and lengthy criminal history. This evidence is set forth in detail in the original respondent's brief. (See RB 15-17 and 21RT 2685-2690 [propensity for violence evidence at first trial]; RB 35-36 and 41RT 5215-5218 [rap sheet evidence at second trial].)

In sum, reversal of Bankston's convictions is not warranted because the alleged violations of the RJA that he raises on appeal would not have impacted the jury's verdicts, and thus any assumed violation of the Act at the guilt phase trials was harmless beyond a reasonable doubt. (§ 745, subd. (k).)

D. In light of the “Bengal tiger” analogy used during the penalty phase, Bankston’s death sentence should be vacated

In contrast to Bankston's guilt-phase RJA claims, his penalty-phase RJA claim has merit. Bankston contends, and respondent agrees, that the prosecutor's use of the “Bengal tiger” analogy during the penalty phase argument constitutes a violation of the RJA. (SSAOB 46-47.) Because the record does not demonstrate that the violation was harmless beyond a reasonable doubt, Bankston's death sentence should be vacated and invalidated, and he should be sentenced to life in prison without possibility of parole.³

³ Because respondent agrees that Bankston is entitled to have his death sentence vacated in light of the “Bengal tiger” analogy, there is no need to address Bankston's allegations that the prosecutor also violated the RJA during the penalty argument by referring to him as a “thug” and a “killing machine.” (See SSAOB 46-49.)

During the penalty phase argument summation, the prosecutor urged the jury not to be persuaded by Bankston's demeanor and appearance in the courtroom, arguing, "The person that we see here in court is not the person that was out on the streets, it's not the person that conducts himself in the manner in which we heard about in custody." (52RT 6522.) The prosecutor continued by relating to the jury the fable of the "Bengal tiger," stating:

There's a little story called the Bengal Tiger. We have a journalist going to the zoo. He goes to the zoo and he sees a plaque. And the plaque says, oh, Bengal tiger. So he's looking at it and he sees this tiger. This tiger is just kind of laid out, real lethargic, kind of licking his paw. Behind him he hears a voice who says, "That's not a Bengal tiger." And the guy kinds of turns around and says, "What are you talking about? The sign says that." He says, "No, that's not a Bengal tiger." This individual who had said that was kind of dressed in a safari outfit.

So the two of them make a wager, and they go off to India in search of a Bengal tiger. As they go into the jungles deeper and deeper, the journalist is walking and he comes along a clearing and he sees this enormous tiger. He sees the muscles all flexed out, he sees the claws out, he sees the fangs, he sees the teeth, he hears the growl. And he runs back to the hunter and the hunter says, "Now you see a Bengal tiger."

Ladies and gentlemen, you sit in judgment in this case on the real Anthony Bankston, the man who kills without remorse, the man who cares nothing about human life.

(52RT 6522-6523.)

As noted, the RJA explicitly prohibits "language that compares the defendant to an animal." (§ 745, subd. (h)(4).)

Accordingly, respondent does not dispute that the prosecutor's comparison of Bankston to a wild tiger with fangs, claws, and muscles flexed, violated section 745, subdivision (a)(2). Indeed, as Bankston observes, the Legislature contemplated this very "Bengal tiger" analogy as an example of discriminatory language when it enacted Assembly Bill 2542, specifically citing "cases where prosecutors have compared defendants who are people of color to Bengal tigers." (AB 2542, Stats. 2020, ch. 317, § 2, subd. (e).)

As set forth above, in cases such as this one in which judgment was entered before January 1, 2021, the court "shall impose a remedy" from a list of possible remedies (see § 745, subds. (e)(1), (e)(2)(A)-(B)), "unless the state proves beyond a reasonable doubt that the violation did not contribute to the judgment." (§ 745, subd. (k).) On this record, respondent cannot demonstrate beyond a reasonable doubt that the prohibited animal comparison did not contribute to the jury's decision to fix the punishment as death.

Because the RJA violation occurred at the penalty phase, this Court must impose a remedy pursuant to section 745, subdivision (e)(2)(B), which provides: "After a judgment has been entered, if the court finds that only the sentence was sought, obtained, or imposed in violation of subdivision (a), the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence. On resentencing, the court shall not impose a new sentence greater than that previously imposed."

The statements giving rise to the prejudicial RJA violation were made during the penalty phase of appellant's capital trial; thus, "only the sentence" is at issue. Appellant's death judgment must be vacated and found legally invalid (§ 745, subd. (e)(2)(B)), but because Bankston was convicted of special circumstance first degree murder in counts 1 and 2, the only remaining sentence that may be imposed is life in prison without possibility of parole. (§ 190.2, subd. (a)(3) [multiple-murder special circumstance murder requires sentence of death or life in prison without possibility of parole].)

CONCLUSION

Based on the arguments and authorities set forth above, in the respondent's brief, the first supplemental respondent's brief, and the second supplemental respondent's brief, Bankston's death sentence should be vacated and he should be sentenced to life in prison without possibility of parole. The judgment should be affirmed in all other respects.

Respectfully submitted,

ROB BONTA

Attorney General of California

LANCE E. WINTERS

Chief Assistant Attorney General

JAMES WILLIAM BILDERBACK II

Senior Assistant Attorney General

STACY S. SCHWARTZ

Deputy Attorney General

/S/ STEVEN E. MERCER

STEVEN E. MERCER

Deputy Attorney General

Attorneys for Respondent

February 6, 2024

CERTIFICATE OF COMPLIANCE

I certify that the attached THIRD SUPPLEMENTAL RESPONDENT'S BRIEF uses a 13 point Century Schoolbook font and contains 4,543 words.

ROB BONTA
Attorney General of California

/S/ STEVEN E. MERCER

STEVEN E. MERCER
*Deputy Attorney General
Attorneys for Respondent*

February 6, 2024

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

Case Name: *People v. Anthony Bankston* No.: S044739 (CAPITAL CASE)

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 February 6, 2024, I electronically served the attached THIRD SUPPLEMENTAL RESPONDENT'S BRIEF by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on February 6, 2024, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

David Slayton
Executive Officer/Clerk of Court
Los Angeles County Superior Court
Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

Governor's Office
Attn: Legal Affairs Secretary
State Capitol, First Floor
Sacramento, CA 95814

Death Penalty Appeals Clerk
Los Angeles County Superior Court
Clara Shortridge Foltz Criminal Justice Center
210 West Temple Street, Room M-3
Los Angeles, CA 90012

On February 6, 2024, I served the attached THIRD SUPPLEMENTAL RESPONDENT'S BRIEF by transmitting a true copy via electronic mail to:

Erik Levin
Attorney at Law
erik.levin@ospd.ca.gov

California Appellate Project
filing@capsf.org

Los Angeles County District Attorney's Office
appellate.nonurgent@da.lacounty.gov

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 February 6, 2024, at Los Angeles, California.

Frances Conroy
Declarant

/s/ Frances Conroy
Signature

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. BANKSTON (ANTHONY
GEORGE)**

Case Number: **S044739**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **steven.mercer@doj.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
SUPPLEMENTAL BRIEF	Third Supp. RB

Service Recipients:

Person Served	Email Address	Type	Date / Time
Erik Levin Office of the State Public Defender 208274	erik.levin@ospd.ca.gov	e-Serve	2/6/2024 9:00:40 AM
Mary McComb Office of the State Public Defender 132505	mary.mccomb@ospd.ca.gov	e-Serve	2/6/2024 9:00:40 AM
Office Office Of The State Public Defender - Ok Evan Young, Deputy State Public Defender 000000	docketing@ospd.ca.gov	e-Serve	2/6/2024 9:00:40 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

2/6/2024

Date

/s/Frances Conroy

Signature

Mercer, Steven (196911)

Last Name, First Name (PNum)

CA Attorney General's Office - Los Angeles

Law Firm