

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FOUR
Case No. B343120

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

v.

KEVIN PERELMAN,
Defendant and Appellant.

APPELLANT’S REPLY BRIEF

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PART 1

INTRODUCTION

Respondent’s Brief misstates and minimizes Appellant’s challenge, unfairly labeling it speculative, and ignores both the full legal foundation and factual context. The appeal is

grounded on repeated and compounding errors by the prosecution and trial court: improper handling and presentation of digital video evidence, persistent financial and community bias by accusers, a legally incomplete trial narrative, sentencing confusion, and the continued imposition of punishment after all penal goals have been met. These cumulative defects at every stage—investigation, evidence, trial, and sentence—require outright reversal and closure, not further proceedings.

I. FUNDAMENTAL DEFECTS IN VIDEO AUTHENTICATION AND DIGITAL RELIABILITY

A. Derivative Video Issue (Cellphone Recording of DVR Playback)

The prosecution's case rested on video exhibits that were **not the original DVR surveillance files** but, instead, were derivative cellphone recordings produced by a community member filming their own computer screen as the DVR footage played. The result is that what jurors saw:

- Was at least two steps removed from the true source (DVR → on-screen playback → cellphone capture);
- May have introduced new artifact, distortion, and loss—frame rates, resolution, and clarity may differ from the DVR recording;
- Was produced and transmitted by a community member, not a neutral expert or system custodian.

There was **no forensic testimony** regarding the process of digital capture, preservation, or transmission, nor any direct comparison of these derivative videos to any original. This raises grave questions under *People v. Catlin** (2001) 26 Cal.4th 81, 134 (reasonable certainty as to authenticity and integrity required), *People v. Goldsmith** (2014) 59 Cal.4th 258, and the Evidence Code.

B. Failure to Produce Original DVR Files, System Logs, or Metadata

Original DVR surveillance footage was **never submitted to the court**. No system logs, no preservation chain, no metadata, and no vendor or expert testimony was provided:

- The prosecution made no showing that original files were unavailable or even sought.
- There is no documentation confirming the dates, times, or digital signatures of the source files.

- The absence of original files prohibits the kind of forensic evaluation and hashing that California law and best practices require, especially in digital evidence cases (*Goldsmith* at 266–68; *People v. Valdez* (2011) 201 Cal.App.4th 1429, 1435).

C. Chain of Custody and Preservation Lapses

Chain of custody as presented at trial was incomplete:

- Christensen (Warner Plaza) was unsure of the method by which the videos were initially retrieved and delivered.
- Gatlin did not retrieve the footage herself and relied on emailed cellphone recordings.
- Bear, a board member with personal stake, used his own device, with no documentation or controls, thereby introducing further risk of substitution, montage, omission, or other alteration.
- No system technician was called. No preservation documentation was offered.

This entire sequence is precisely the sort of evidentiary gap addressed in *People v. Beckley* (2010) 185 Cal.App.4th 509 and *In re K.B.* (2015) 238 Cal.App.4th 989: when secondary, non-original digital files are used, and no direct chain is established nor technical safeguards explained, courts must treat the evidence with skepticism.

D. Overextension of Goldsmith

Respondent misreads *Goldsmith*, which holds that “foundational authentication is required for all writings, including digital images,” and that it can be established either by a direct witness or circumstantial evidence “provided reliability is established,” but “conflicting inferences go to weight, not admissibility.” (*Goldsmith*, 59 Cal.4th at 267–68.) Goldsmith, however, involved original system-generated evidence and routine enforcement process, whereas this case involved derivative, twice-removed, and unverified videos.

E. Relevance of Beckley

Beckley recognized this precise risk: authentication procedures for digital evidence must be robust, because of the inherent ease of manipulation and misattribution, especially when files are removed from their original source. Here, the prosecution offered no such robust showing, relying entirely on derivative video captured by a party with a vested interest.

II. RESPONDENT’S “SECONDARY EVIDENCE” ARGUMENT MISSTATES THE LAW AND FACTS

Respondent suggests that concerns about foundational reliability “go only to weight, not admissibility,” and that secondary evidence of the videos is unproblematic. This misstates both law and fact.

California Evidence Code section 1521 (“Secondary Evidence Rule”) allows secondary evidence only if it is otherwise admissible, and *only* when introduction of the original is not feasible and when “admission of the secondary evidence would not be unfair.” See also *People v. Skiles* (2011) 51 Cal.4th 1178, 1187 (“unfairness” bars secondary evidence if material inaccuracy or prejudice results).

Here, however:

- The prosecution made no effort to retrieve or present the original DVR files, despite the clear availability of modern digital storage.
- The chain of custody for the videos admitted is unsupported, informal, and includes no control mechanisms. There are no logs, no hashes, and no technical showings of completeness or accuracy.
- Where the best evidence is easily accessible and not destroyed, courts routinely require its production unless a strong showing justifies its absence (*Valdez*, supra, 201 Cal.App.4th 1429, 1435; *Beckley*).
- Admitting derivative video captured by an interested party gives the strongest possible reason for withholding trust or presumption of reliability—the very situation the secondary evidence rule is intended to prevent.
- The trial court’s abuse of discretion in admitting the derivative evidence is not insulated from challenge simply because the jury viewed the videos or defense counsel questioned their contents. Admission requires evidentiary foundation; defense argument is not a substitute. See *People v. Cummings* (1993) 4 Cal.4th 1233, 1289–91.

III. CHARACTER AND CONTEXT: IMPROPER USE OF CHARACTER EVIDENCE, SYSTEMIC BIAS, AND BLACK-AND-WHITE FRAMING

Throughout the proceedings, both Respondent’s brief and the sentencing discussion sought to paint Appellant as a figure of suspicion and antipathy—focusing on acts such as “filming people,” which were not elements of the vandalism charge, not criminal, and never independently adjudicated. This one-dimensional, “black-and-white” narrative left the Court and jury with no room for context, nuance, or due process fairness.

Key elements include:

- **Jury instructions and the prosecution’s overall approach artificially narrowed the case to a simple “did Kevin do it” question.** This binary framing prevented the jury from considering substantial evidence of mutual hostility, years-long neighbor disputes, longstanding patterns of provocation, social exclusion, or the possibility of retaliatory motives by the alleged victims.
- **The prosecution’s presentation continually portrayed Appellant as an “outsider” or “problem neighbor,” allowing negative impressions, rumors, and community sentiment—wholly unrelated to the elements of the charged offenses—to predominate.**
- **Notably, repeated references to Appellant’s “filming people” were cited throughout trial and at sentencing as evidence of character or dangerousness.** Yet, this conduct was never criminal, never charged, and never proven to be wrongful. In fact, Appellant’s act of recording neighbors was a reasonable attempt to document ongoing harassment and provocation by hostile neighbors, rather than a sign of aggression or bad intent. That context was never allowed before the jury.
- **The principal accuser, in both pretrial and sentencing, repeatedly made stigmatizing and conclusory references to Appellant’s alleged “mental illness.”** Importantly, these were not based on any clinical or expert diagnosis, but instead were lay accusations used solely to prejudice the jury and cast Appellant as both an outsider and inherently untrustworthy. Permitting the jury to hear, and be colored by, such bare stigmatization—without medical evidence or rebuttal—violated the principle that criminal trials must be decided on facts, not stereotypes or social stigma.
- **Contrary to Respondent’s argument, Appellant failed to present any defense not by conscious or strategic choice, but because trial counsel did not put on a defense and never informed Appellant that he had the right to testify, present evidence, or challenge the prosecution’s characterizations and narrative.** This deprivation meant Appellant was unable to respond in any manner to attacks on his character, offer evidence of harassment, or even tell his own side of the story.
- **As the Supreme Court has held, a criminal proceeding that devolves into character assassination or that prevents the accused from defending himself—factually, contextually, or otherwise—is a structural failure of due process and the adversarial process.** See **Holmes v. South Carolina** (2006) 547 U.S. 319, 324 (“Criminal defendants must be afforded a meaningful opportunity to present a

complete defense”); **Davis v. Alaska** (1974) 415 U.S. 308, 316–17 (bias, motive, and context are constitutionally required lines of defense); **People v. Cummings** (1993) 4 Cal.4th 1233, 1289–91 (error to admit or argue prejudicial character themes without basis in fact).

- **Furthermore, at sentencing, Mr. Scroggins was permitted to analogize Appellant to “a spider who leaves his house at night.”** This metaphor far exceeded the factual issues in the case and was designed to plant in the court’s mind the prejudicial image of Appellant as secretive, menacing, and engaged in wrongful conduct, even outside the events on trial. The mere fact that Mr. Scroggins could make such a claim demonstrates a pattern of community monitoring and obsession with Appellant’s private movements, amplifying Appellant’s “outsider” status and suggesting collective neighborhood action or surveillance well beyond impartial victimhood. This commentary implied Appellant’s conduct was suspicious or sinister, despite there being no evidence of wrongdoing in leaving one’s home. The record suggests this was less about fact and more about creating a narrative of threat, reinforcing the social pressure underlying the prosecution and his personal agendas while working with the Home Owners Association even after he was no longer on the board.

Allowing such damaging metaphors and unverifiable “knowledge” about Appellant’s private movements—without opportunity for rebuttal or context—further illustrates how the prosecution succeeded not by proof but by inflaming bias and fear. The appellate courts have long condemned criminal proceedings where the “outsider” status of the defendant, or the mystery of his personal life, becomes a substitute for actual evidence. See **Holmes**, supra; **Cummings**, supra.

The cumulative result was not only an incomplete trial but one in which Appellant was prevented, by structure and by counsel, from responding to attacks on his character and from presenting a benign or reasonable explanation for conduct labeled “suspicious.” Such denial of the right to defend oneself, compounded by improper and stigmatizing labels and inflammatory metaphors, requires outright reversal.

Rather than adjudicating criminal liability based on reliable evidence, the trial became a forum for reinforcing prior animosity—without adequate impeachment of witnesses as to their aggressive behaviors. That cumulative context is central to why the verdict here cannot stand.

IV. FINANCIAL INCENTIVE AND COMMUNITY ANIMUS: FULL ACCOUNTING OF RECORD FACTS

It is black letter law that “bias, motive, or pecuniary interest is always relevant to credibility.” (*Davis v. Alaska*, *People v. Wheeler* (1992) 4 Cal.4th 284, 295.)

- According to pre-preliminary hearing testimony, Mr. Scroggins received USAA insurance compensation for nearly all alleged vehicle damage, yet obtained substantial court-ordered restitution above and beyond his deductible, giving him a strong motive to maximize allegations.
- Notably, Mr. Scroggins alone claimed that a single scratch or keyed panel meant the entire car had to be repainted—a statement unsupported by repair industry standards or expert testimony.
- The “double recovery” (insurance plus restitution) allowed for a windfall, not compensation for proven loss.
- Excluded video and lay testimony would have shown repeated efforts by neighbors, including Scroggins, to pressure and ostracize Appellant—again suggesting personal animosity as a motive throughout.

> **Footnote:** > For the Court’s context, Appellant notes that since judgment, Mr. Scroggins has continued this pattern, repeatedly leaving written monetary demands (totaling thousands of dollars) on Appellant’s car and even going to Appellant’s father’s office to demand a third \$5,000 payment. These acts, occurring post-judgment, are not offered as direct evidence for reversal but confirm a longstanding pattern of financial motives and personal bias, further undermining witness credibility. (See *People v. Wheeler*, supra, 4 Cal.4th 284, 295.)

V. THE LACK OF MEANINGFUL DEFENSE PRECLUDES CONFIDENCE IN THE VERDICT

Due process requires that the accused be allowed a real opportunity to present a defense—both as to factual innocence and in challenging motive, credibility, and foundational reliability. Those opportunities were denied Appellant at every turn:

- Jury instructions and evidentiary rulings prevented the jury from hearing or considering evidence of ongoing neighborhood conflict, a pattern of provocation or harassment by key witnesses toward Appellant, or any alternative explanations for what happened.
- Video recordings in Appellant’s possession, documenting threats, provocation, and repeated attempts by neighbors to have him removed, were excluded.

- Defense counsel failed to sufficiently cross-examine witnesses on their bias, pecuniary motives, or the factual implausibility of their testimony, particularly as to the supposed necessity of repainting an entire car for minor damages.
- Notably, the Respondent’s Brief asserts that Mr. Scroggins’s “entire car was damaged,” yet the trial transcript shows that Mr. Scroggins did not testify to complete damage to every panel. Instead, his testimony concerned selected areas, and his own statement was that, in his opinion, any damage required repainting the entire car—a claim unsubstantiated by any industry expert or evidence. This inconsistency reflects a broader pattern in which post-trial advocacy embellishes the facts beyond what the record supports, further catering to the agenda of the complaining witness rather than an impartial assessment of the evidence.
- At sentencing, the principal witness was permitted to analogize Appellant to “a spider who leaves the house at night” and recount supposed surveillance, further stoking an atmosphere of social control and animosity—rather than lawful justice.

As **Davis v. Alaska** (1974) 415 U.S. 308, 316–18, holds, the right to challenge accusers on the basis of bias, motive, or interest is fundamental. So too, **Holmes v. South Carolina** (2006) 547 U.S. 319, 324, demands that courts not insulate one-sided narratives from proper defense challenge. The cumulative effect here was a verdict rooted in isolation, assumption, and conviction by character, not by trustworthy evidence.

VI. SENTENCING STRUCTURE, ORAL PRONOUNCEMENT VS. MINUTE ORDER

Appellant’s sentence is further clouded by procedural and documentary errors:

- The oral pronouncement referenced a “split sentence” and “mandatory supervision,” creating confusion over whether Penal Code § 1170(h)(5)(B) was triggered.
- The minute order was later amended to reflect formal probation, but the record is unclear and ambiguous about which sentence legally controls, as between the transcript and subsequent orders.
- Under **People v. Mesa** (1975) 14 Cal.3d 466, 471, the oral pronouncement governs, and ambiguity must be resolved in the defendant’s favor.
- Regardless, Appellant has already served the full 364-day jail term originally imposed, and his continued probation rests on a conviction tainted by all of the errors described above.

- Respondent nowhere asserts any public safety or rehabilitative need for continued supervision, inconsistent with the goals of criminal justice and precedent (*People v. Shirley* (1982) 31 Cal.3d 18, 71).

VII. CONTINUING POST-JUDGMENT CONDUCT: CONTEXTUAL ILLUSTRATION OF MOTIVE

Although the appellate record is formally limited to matters arising at trial, the Court is permitted to consider ongoing patterns of conduct for context, especially as they illuminate witness motive, bias, and the non-dispassionate nature of the prosecution. Since judgment:

- Mr. Scroggins has repeatedly left written demands for additional restitution on Appellant's car, often totaling thousands of dollars.
- He has, on at least one occasion, gone to Appellant's father's office to request a third \$5,000 payment.
- Alongside these financial demands, there has been a persistent and obsessive campaign to label Appellant as "mentally ill"—a tactic employed not through clinical assessment, but through lay accusation and rumor. These repeated, non-expert references to supposed mental illness were wielded for their stigmatizing effect, not for legitimate evidentiary or safety reasons.

These actions—occurring during probation and while this appeal has been pending—powerfully reinforce the concern that the entire process, from initial reporting, through trial and judgment, and even post-sentencing, has been marked by overriding financial and personal motives, rather than dispassionate pursuit of justice. The campaign to label Appellant as mentally ill—absent expert support—demonstrates an improper attempt to discredit Appellant through stigma, further compounding the atmosphere of animus and exclusion that defined these proceedings.

Such persistent post-judgment behavior underscores a broader pattern in which neighbor animosity, personal grudge, and a desire for unjust enrichment have played a central role, rendering the proceedings fundamentally unfair and undermining confidence in the reliability of the verdict.

While not pressed as grounds for reversal, they offer important context, further emphasizing the ongoing risk of unfairness if any remand or retrial were allowed at this late stage.

VIII. THIS COURT SHOULD REVERSE WITH INSTRUCTIONS TO DISMISS OR, ALTERNATIVELY, STRICTLY LIMIT ANY REMAND

The cumulative procedural and substantive failures in this matter—improper reliance on derivative and unauthenticated digital evidence, exclusion of key defense narrative and impeachment, one-sided community-driven prosecution, and the fundamental lack of a continuing penal purpose—require outright reversal with directions to dismiss. See **People v. Superior Court (Romero)** (1996) 13 Cal.4th 497, 530; **People v. Hatch** (2000) 22 Cal.4th 260, 273.

If the Court determines any further process is necessary, Appellant respectfully requests that any remand be strictly limited, precluding retrial on the previously hung count or renewed efforts at supervision or additional proceedings.

The history of this matter demonstrates that Appellant has, for decades, been the enduring target of sustained community hostility, provocation, and coordinated efforts at social exclusion—ranging from punitive surveillance to repeated incidents of harassment and stigmatization. Under such conditions, a constitutionally fair and impartial trial is structurally impossible: not only was the Appellant denied any meaningful opportunity to present a defense to the underlying charges or the persistent attacks on his character, but the trial court's instructions themselves prevented the jury from considering the reality of ongoing coercion, intimidation, and provocation that compelled Appellant's conduct.

A “fair trial” does not exist when, as here, the broader campaign of neighborhood hostility and persistent labeling as “mentally ill” precluded any ethical or legal self-defense—or even jury consideration of context—regardless of whether that defense would ordinarily be available for the charge at issue.

The law may limit **classic** self-defense to imminent danger, but when relentless non-physical pressure, restriction of movement, and constant provocation are the lived reality, the fairness and reliability of any verdict is fatally compromised. Proceeding further with supervision, enforcement, or retrial in the face of such systemic unfairness would only perpetuate injustice.

For the foregoing reasons and those previously stated, the risks of repeated abuse of process, further character-driven prosecution, and ongoing hardship to Appellant cannot be justified. The interests of finality and due process require closure, not continuation, of this deeply flawed proceeding.

CONCLUSION

For all the foregoing reasons—and those detailed in Appellant’s Opening Brief—Appellant respectfully requests that the Court **reverse the judgment, direct dismissal with prejudice of all charges, and expressly preclude retrial, further punishment, or**

continued probation. Fairness and the interests of justice demand this case be brought to final closure.

Respectfully submitted,

Kevin Perelman, Appellant Pro Se

2/23/2026

TABLE OF AUTHORITIES

Case	Citation
People v. Goldsmith	59 Cal.4th 258 (2014)
People v. Catlin	26 Cal.4th 81 (2001)
People v. Beckley	185 Cal.App.4th 509 (2010)
People v. Valdez	201 Cal.App.4th 1429 (2011)
People v. Skiles	51 Cal.4th 1178 (2011)
In re K.B.	238 Cal.App.4th 989 (2015)
Davis v. Alaska	415 U.S. 308 (1974)
People v. Wheeler	4 Cal.4th 284 (1992)
People v. Cummings	4 Cal.4th 1233 (1993)
Holmes v. South Carolina	547 U.S. 319 (2006)
People v. Superior Court (Romero)	13 Cal.4th 497 (1996)
People v. Hatch	22 Cal.4th 260 (2000)
People v. Shirley	31 Cal.3d 18 (1982)
People v. Mesa	14 Cal.3d 466 (1975)