

# SUPREME COURT COPY

In the Supreme Court of the State of California

PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff and Respondent,  
v.  
JOSHUA MARTIN MIRACLE,  
Defendant and Appellant.

CAPITAL CASE

Case No. S140894

Santa Barbara County Superior Court Case No. 1200303  
The Honorable Brian E. Hill, Judge

SUPREME COURT  
FILED

SEP 16 2015

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# DEATH PENALTY



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## STATEMENT OF THE CASE

On March 7, 2005, the Santa Barbara County Grand Jury returned an indictment charging appellant and codefendant Robert Quinoes Ibarra<sup>1</sup> with murder (Pen. Code,<sup>2</sup> § 187, subd. (a); count 1), and alleging the special circumstance that they intentionally committed the murder while lying in wait (§ 190.2, subd. (a)(15)). Appellant was separately charged with attempted murder (§§ 664/187, subd.(a); count 2), and the lesser offense of assault with a deadly weapon, to wit, a knife (§ 245, subd. (a)(1)). As to count 1, it was alleged that appellant and codefendant Ibarra each personally used a deadly and dangerous weapon (§ 12022, subd. (b)(1)), and committed the offense for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (a)(22)). The indictment further alleged that appellant intentionally committed the murder while an active participant in a criminal street gang, and that the offense was committed to further the activities of a criminal street gang (§ 190.2, subd. (a)(22)). As to count 2, it was alleged that appellant committed the attempted murder with premeditation and deliberation, personally used a deadly and dangerous weapon (§ 12022, subd. (b)(1)), personally inflicted great bodily injury (§ 12022.7, subd. (a)), and committed the offense for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)(1)). As to both

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<sup>1</sup> Codefendant Robert Ibarra is not a party to this automatic appeal; his case was severed from appellant's. Codefendant Ibarra was separately tried, convicted, and sentenced to life without the possibility of parole. Codefendant Ibarra's appeal was heard by the Court of Appeal, Second Appellate District, and an opinion was filed on March 11, 2014. (See *People v. Ibarra* (Mar. 11, 2014, B243065) 2014 Cal.App.Unpub. LEXIS 1706 [unpub. opn.] )

<sup>2</sup> All statutory references are to the Penal Code unless otherwise noted.

counts, it was further alleged that appellant suffered a prior serious or violent felony (§§ 667, subs. (d)(1) & (e)(1), 1170.12, subs. (b)(1) & (c)(1), 1192.7, subd. (c)). (1CT 1-6.)

On March 23, 2005, the prosecutor informed the trial court that he intended to seek the death penalty. (1CT 21.) Appellant indicated his intent to file a motion to represent himself pursuant to *Faretta v. California* (1975) 422 U.S. 806 [95 S.Ct. 2525, 45 L.Ed.2d 562] (*Faretta*) against his appointed counsel's advice. (1RT 29-33.) On April 20, 2005, the court heard and granted appellant's motion to represent himself and appointed advisory counsel. (2CT 534.)

On July 29, 2005, appellant pled guilty with the consent of advisory counsel to murder (count 1), and admitted the special circumstances, special allegations, and prior strike conviction. (2CT 690; 3CT 601-610.) On September 8, 2005, appellant pled guilty to amended count 2, assault with a deadly weapon, to wit, a knife (§ 245, subd. (a)(1)), and admitted that he personally used a deadly and dangerous weapon (§ 12022, subd. (b)(1)) and personally inflicted great bodily injury (§ 12022.7, subd. (a)). The court dismissed the gang allegation in count 2.<sup>3</sup> (3CT 613-614, 618-625.)

The penalty phase trial on count 1 was held before a jury. (4CT 948-949.) The jury returned a verdict of death. (4CT 1062-1065, 1116.) The court denied appellant's automatic motion for modification of the death

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<sup>3</sup> It appears that there is a clerical error in the minutes for the September 8, 2005, plea proceedings. The minute order and reporter's transcript show that appellant admitted the great bodily injury enhancement. (3CT 613; 2RT 335.) In contrast, another minute order indicates that the trial court dismissed the great bodily injury enhancement. (3CT 614.) The minutes should be corrected to reflect the oral pronouncement. (*People v. Jones* (2012) 54 Cal.4th 1, 89.)

sentence<sup>4</sup> (§ 190.4, subd. (e)). (4RT 1142-1145.) The court struck the prior strike conviction. (4CT 1166-1167.) Appellant was sentenced to death, plus 10 years in state prison for the gang enhancement in count 1. The execution of the gang enhancement was stayed pending appellant's automatic appeal on his death sentence. As to count 2, appellant was sentenced to a consecutive seven years in state prison, the execution of which was stayed pending the execution of the sentence in count 1. The court stayed the enhancements for personal use of a weapon pursuant to section 654. Appellant was ordered to pay \$3,401.12 in victim restitution, a \$10,000 restitution fine (§ 1202.4) and a \$10,000 parole revocation fine, but the fines were stayed pending successful completion of parole if the execution on count 1 is not carried out (§ 1202.45). Appellant was awarded 549 days in presentence custody credit, consisting of 478 actual days and 71 days of conduct credit. (4CT 1150-1153, 1155-1159, 1166-1171.)

As to the companion case, case number 1202051, which involved charges stemming from his behavior while in custody, including assault with a deadly weapon (§ 245, subd. (a)(1)), assault on a custodial officer (§ 241.1), possession of a weapon while in custody (§ 4502, subd. (a)), criminal threats (§ 422), and battery on emergency personnel (§243, subd. (c)(1)), appellant pled guilty and was sentenced to three years and ten months, which was stayed pending execution of the death sentence in count 1 of case number 1200303. Appellant was ordered to pay a \$2,400 restitution fine (§ 1202.4) and a \$2,400 parole revocation fine. The fines were stayed pending successful completion of parole (§ 1202.45). (1CT 1168-1169.)

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<sup>4</sup> Appellant declined to move for a new trial and opted for the statutory motion for modification of the death sentence pursuant to section 190.4, subdivision (e). (4CT 1143.)

This appeal is automatic. (§ 1239; 4CT 1160-1161.)

## STATEMENT OF FACTS

### A. Prosecution's Evidence at the Penalty Phase

#### 1. Evidence Supporting Count 2 (attempted murder)

Jaime Lopez was an Eastside gang member with the nickname "Chaparro." He had tattoos of his last name, nickname, and sports teams on his back. (6RT 1595, 1600-1601.) Lopez had known appellant for about four years. During that time, appellant stayed at Lopez's home a few times. Appellant had a tattoo that stated "ESG" on the back of his head. "ESG" stood for "Eastside Gang." (6RT 1595-1596.)

On September 23, 2004, Lopez drove his Cadillac to a Circle K store located on Milpas Road in Santa Barbara. He stopped his car in the parking lot. The driver's side window was down. Lopez saw a knife and moved out of the way, but was stabbed in the upper back. He was also punched above the eye and suffered a cut over it. After Lopez was stabbed, he drove to work, and his boss took him to the hospital. At trial, he denied that appellant was in the parking lot and had stabbed him. (6RT 1598-1606.) Lopez also denied testifying before the grand jury that he saw appellant in the parking lot before he arrived. He also did not tell Santa Barbara Police Detective Gary Siegel that appellant extended his arm as if to shake Lopez's hand, then punched him in the eye, pulled out a knife, and stabbed him. Rather, Lopez testified that it was a "Mexican" who stabbed him. (6RT 1598, 1603-1604.)

Detective Siegel was assigned to investigate the attack on Lopez. Detective Siegel knew Lopez to be an Eastside gang member. Detective Siegel spoke to Lopez and Eastside gang members about the stabbing. (7RT 1609-1610.) During the interview, Lopez described what had happened, but refused to identify who had stabbed him. As the interview

progressed, Lopez identified appellant as the assailant and stated they belonged to the same gang. As a detective who had investigated hundreds of gang-related crimes, Detective Siegel explained to the jury that it was common for gang members to say that they did not know who their attackers were, but later, admit that they knew the identities of their assailants. (7RT 1611-1612, 1617.)

During the interview, Lopez told Detective Siegel that he was in the parking lot area of the Circle K and heard someone call out his name. After he stopped his car in the parking lot, appellant came over. Lopez thought appellant came over to greet him; instead, appellant punched Lopez just above the left eye. Lopez fell forward and saw appellant with a knife in his hand. Lopez moved away while appellant stabbed him. Appellant cut Lopez on the left shoulder area by the neck and slashed him a few times. Lopez stepped on the accelerator and left the area. Lopez identified appellant by name and out of a photographic lineup. (7RT 1612-1613, 1615, 1617-1618.)

Lopez told Detective Siegel that he would not testify at trial because he was afraid for his life and the safety of his children. Lopez was threatened by other Eastside and non-Eastside gang members who called him a "rat." Someone told Lopez, "You'll get yours." Detective Siegel testified that it was common in gang culture for this to occur when a gang member testified in court. (7RT 1615-1616.)

## **2. Evidence in Support of the Capital Murder (Count 1)**

In October of 2005, Robert Galindo lived across the street from San Marcos High School.<sup>5</sup> Robert lived in the apartment with his brother, Rodney,<sup>6</sup> and Phillip Aliano. Robert was not a gang member. (7RT 1619-1621, 1717-1718.)

Robert had known codefendant Ibarra for four years, but did not know him as a gang member. Occasionally, codefendant Ibarra and his girlfriend came over to Robert's apartment to record music on Robert's laptop. Codefendant Ibarra also visited people he knew who lived in Robert's apartment complex. When codefendant Ibarra was at Robert's apartment, they both used crystal methamphetamine together. Sometimes, codefendant Ibarra spent the night in Robert's apartment. (7RT 1620-1622, 1625-1626, 1718.)

Robert had known Elias Silva for three years. Robert met Silva through Danny Ramirez, who was also known as "Prankster." Silva was previously in a gang, but he no longer acted like he was part of it. Robert bought drugs from Silva. (7RT 1622, 1710, 1718-1719.) Codefendant Ibarra and Silva were familiar with each other. Codefendant Ibarra did not like Silva because they both dated the same woman. On prior occasions, codefendant Ibarra and Silva had verbal altercations outside Robert's apartment. (7RT 1627-1628.)

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<sup>5</sup> Robert Galindo pleaded guilty to a voluntary manslaughter charge in connection with Elias Silva's death. Robert faced 11 years in prison. (7RT 1623.)

<sup>6</sup> Robert and Rodney Galindo share the same last name. Therefore, for ease of reference, respondent will refer to them by their first names.

On the Wednesday before Silva's death, codefendant Ibarra was at Robert's apartment.<sup>7</sup> Codefendant Ibarra and Robert shared a glass pipe and used methamphetamine together. (7RT 1627, 1706-1707.) The following day, Ramirez asked Robert if he could tattoo Silva in Robert's house, and Robert did not object. Ramirez was a tattoo artist and planned to tattoo Silva in exchange for the money Ramirez owed to Silva. (7RT 1627-1629, 1631.) Ramirez came over to Robert's apartment with appellant, who was introduced to Robert as "Junior." Appellant and codefendant Ibarra knew each other. (7RT 1622-1623, 1629-1630, 1704-1705.) On Thursday, they were in and out of Robert's apartment. Appellant, codefendant Ibarra, and Ramirez spent the night in Robert's apartment. (7RT 1631-1632.)

When Robert woke up on Friday morning, appellant and codefendant Ibarra were inside the apartment and Ramirez had left with Silva to have the tattoo work done somewhere else. Robert asked appellant why he was staying in the apartment. Appellant stated that Ramirez told him that he could stay in the apartment until Ramirez returned. Appellant and codefendant Ibarra stayed in the apartment for a while, and then codefendant Ibarra left to visit other people he knew in the apartment complex. Codefendant Ibarra returned to the apartment, and then he and appellant left together to run errands. They later returned, and appellant spent Friday night in the apartment, but codefendant Ibarra left. (7RT 1632-1633, 1637.)

On Saturday morning, Robert awoke to find codefendant Ibarra in his apartment telling appellant about his previous night out while appellant

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<sup>7</sup> Robert was uncertain as to the timing of the events. Elias Silva was murdered sometime during the night of October 2, 2004 (Saturday), and the early morning hours of October 3, 2004. (7RT 1625, 1627.)

used Robert's computer. Rodney had returned home from his job at Chumash Casino, and Aliano was getting ready to go to work. (7RT 1634, 1637-1639.)

Appellant and codefendant Ibarra spent a lot of time together in the bathroom using methamphetamine. Codefendant Ibarra had a glass pipe that he used to smoke methamphetamine. Additionally, Robert gave codefendant Ibarra needles to use the methamphetamine intravenously. While Robert used crystal methamphetamine on Wednesday, he did not use it on Saturday because he had to take a drug test the following week. (7RT 1639, 1699-1700, 1713-1714.)

On the Saturday morning before the murder, Nicole P.,<sup>8</sup> who was 14 years old and lived in Robert's apartment complex,<sup>9</sup> came over to Robert's apartment to pick up her purse that she had left behind on Friday. She stood at the door and did not enter the apartment. Robert asked codefendant Ibarra not to have Nicole P. in his apartment and said that she needed to leave. Codefendant Ibarra gave her the purse and asked her to leave. (7RT 1696-1698, 1732-1733.)

Later, when Santa Barbara Sheriff's Deputy Victor Alvarez interviewed Nicole P., she stated that she was very familiar with the people inside Robert's apartment. She stated that she was inside the apartment on the day of the murder. Codefendant Ibarra told her to leave and said, "Meja [*sic*], you need to leave. You can't be here. Something bad is going to happen. I don't want you to get hurt." (7RT 1740-1741.)

Sometime during Saturday, codefendant Ibarra left the apartment to go visit his daughter. Appellant remained in the apartment with Robert,

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<sup>8</sup> Nicole P. did not recall what she told the sheriff's deputies. (7RT 1734.)

<sup>9</sup> Nicole P. was staying at a friend's grandmother's apartment because she was "on the run." (7RT 1736.)