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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN LORENZO SOTO et al.,

Defendants and Appellants.

H034605

(Santa Cruz County

Super. Ct. Nos. F17281, F17283)

ORDER MODIFYING OPINION
AND DENYING PETITIONS FOR
REHEARING

BY THE COURT:

It is ordered that the opinion filed herein on June 26, 2012, be modified as follows:

1. On page 30, section B, after the first full paragraph, insert the following paragraphs:

A criminal defendant has the right under both the federal and state Constitutions to confront the witnesses against him. (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15.) In *Crawford v. Washington* (2004) 541 U.S. 36 (*Crawford*), the United States Supreme Court held that, under the confrontation clause, “[t]estimonial statements of witnesses absent from trial” are admissible “only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine [the witness].” (*Id.* at p. 59, fn. omitted.) “Under *Crawford*, . . . the Confrontation Clause has no application to [out-of-court, nontestimonial statements not subject to prior cross-examination] and therefore permits their admission even if they lack indicia of reliability.” (*Whorton v. Bockting* (2007) 549 U.S. 406, 420; see also *Davis v. Washington* (2006) 547 U.S. 813, 821.) “Where nontestimonial hearsay is at issue, it is wholly consistent with the Framers’

design to afford the States flexibility in their development of hearsay law”
(*Crawford, supra*, at p. 68.)

The veracity of nontestimonial hearsay statements is sufficiently dependable to allow the untested admission of such statements against a defendant when (1) the evidence falls within a firmly rooted hearsay exception or (2) the evidence contains “particularized guarantees of trustworthiness” such that adversarial testing would be expected to add little, if anything, to the statements’ reliability. (*Ohio v. Roberts* (1980) 448 U.S. 56, 66; *Crawford, supra*, 541 U.S. at p. 68.) In *Lilly v. Virginia* (1999) 527 U.S. 116 (*Lilly*), a plurality of the court held that “accomplices’ confessions that inculcate a criminal defendant are not within a firmly rooted exception to the hearsay rule as that concept has been defined in our Confrontation Clause jurisprudence.” (*Id.* at p. 134, fn. omitted.) “This, of course, does not mean, . . . that the Confrontation Clause imposes a ‘blanket ban on the government’s use of [nontestifying] accomplice statements that incriminate a defendant.’ Rather it simply means that the government must satisfy the second prong of the *Ohio v. Roberts*, 448 U.S. 56 (1980) test[, that the statements bear a particularized guarantee of trustworthiness,] in order to introduce such statements.” (*Id.* at p. 134, fn. 5.) On appeal, we conduct a de novo review to determine whether that trustworthiness test has been satisfied. (*Id.* at pp. 136-137.)

2. On page 33, first paragraph, the last two sentences are deleted. Insert the following new paragraph:

After independently reviewing the record, we find that the statements Gonzales made to Martinez bore a particularized guarantee of trustworthiness. Accordingly, admission of the statements did not violate the federal or state Constitutions or state law. (*Lilly, supra*, 527 U.S. at pp. 136-137; *Ohio v. Roberts, supra*, 448 U.S. at p. 66; *Cervantes, supra*, 118 Cal.App.4th at p. 177.)

There is no change in judgment. The petitions for rehearing are denied.

Dated: _____

Premo, J.

Rushing, P.J.

Elia, J.