

SUPREME COURT COPY

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

SOCORRO SUSAN CARO,

Defendant and Appellant.

CAPITAL CASE

Case No. S106274

**SUPREME COURT
FILED**

MAY 15 2014

Ventura County Superior Court Case No. CR47813

The Honorable Donald D. Coleman, Judge Frank A. McGuire Clerk

Deputy

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DEATH PENALTY

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STATEMENT OF THE CASE

In an information filed by the Ventura County District Attorney, appellant was charged with three counts of murder (Pen. Code,¹ § 187, subd. (a)). As to each count, the information further alleged that appellant personally and intentionally discharged a firearm, to wit, a handgun, which proximately caused great bodily injury and death (§ 12022.53, subd. (d)). The information also alleged the multiple-murder special circumstance (§ 190.2, subd. (a)(3)). (1CT 73-75.)

Appellant entered pleas of not guilty and not guilty by reason of insanity, and denied the special allegations. (1CT 94, 105.) Trial was by jury. On November 5, 2001, the jury found appellant guilty of three counts of first degree murder and further found the firearm enhancements true. (10CT 1900.) The next day, appellant withdrew her plea of not guilty by reason of insanity. (10CT 1920.) On December 10, 2001, following a jury trial on the penalty phase, the jury fixed the penalty at death for each count. (11CT 2241.)

On April 5, 2002, the trial court imposed a sentence of death as to each count. The court further imposed a sentence of 25 years to life for the firearm enhancement as to each count, to be served concurrently to the sentence of death. The court imposed a \$10,000 restitution fine. Appellant received 857 days of custody credit, consisting of 857 days of actual custody. (12CT 2536, 2544-2548.)

¹ All further references are to the Penal Code unless otherwise indicated.

STATEMENT OF FACTS

On the evening of November 22, 1999, following an argument between appellant and her husband that caused appellant to believe her marriage was ending, appellant shot and killed three of their sons: 11-year-old Joey, eight-year-old Michael, and five-year-old Christopher. Appellant then shot herself in the head but survived. At trial, the defense relied on the theory that appellant's husband was the actual perpetrator who attempted to frame appellant for the murders because he was having an affair with one of his employees.

I. GUILT PHASE

A. Prosecution Evidence

1. Background

Appellant worked as an extern in Dr. Xavier Caro's medical office in 1979, and she and Dr. Caro began dating in 1980. (20RT 3577.) Appellant later left the office and returned to school. (20RT 3577-3578.) In 1984, while still dating Dr. Caro, appellant returned to Dr. Caro's office and began working as the office manager. (20RT 3578-3579.) In 1986, appellant and Dr. Caro got married. (20RT 3579, 3581; 22RT 3972, 3984.)

Appellant and Dr. Caro had four children: Xavier, known as "Joey," was born on May 12, 1988; Michael (also known as "Mikey") was born on November 10, 1991; Christopher was born on July 13, 1994; and Gabriel was born on August 11, 1998. (20RT 3582.)

At the beginning of the marriage, appellant and Dr. Caro lived in a home that he owned in Granada Hills. In 1994, they moved to a home on Presilla Road in Camarillo, which the Caro family referred to as the "castle house." (20RT 3577-3588, 3594-3595.) Appellant's parents, Gregorio and

Juanita Leon,² then moved into Dr. Caro's Granada Hills home and sold their own home. The Leons placed the proceeds from their home sale in an investment account at Wedbush, Morgan, and Stanley ("Wedbush account"), and Dr. Caro had the power of attorney over the account. (20RT 3599-3602.) Dr. Caro continued to pay the mortgage and some of the regular expenses for the Granada Hills home. (20RT 3605.)

Juanita had her own bedroom in the Caros' Camarillo home and she stayed overnight three or four times a week. Juanita helped with cooking and tending to the children. (20RT 3598.) Gregorio ran errands for the Caro family and occasionally performed bricklaying and landscaping chores at the Camarillo home. (20RT 3602, 3604-3605.)

The Caros owned vacation property in Waterford, and the Caros and Leons vacationed together at the property several times a year. (20RT 3607.) Gregorio helped maintain the vacation property by performing some chores and supervising the handyman. (20RT 3608.)

In 1993 or 1994, Dr. Caro purchased a .38-caliber Smith and Wesson revolver (Peo. Exh. No. 30) for home protection, and he modified it for appellant's use by making the trigger easier to pull and by customizing the handle to make it more attractive. (20RT 3611-3613.) Dr. Caro arranged for personalized firearm lessons for himself and appellant, and appellant practiced shooting the .38-caliber gun at the firing range. (20RT 3613-3615.) The .38-caliber gun and another gun were stored in a locked gun safe located in a walk-in closet in the home; the guns were loaded when kept in the safe. (20RT 3615, 3618-3619.) The safe had a five-button combination lock; Dr. Caro knew the combination, and he did not tell it to appellant. (20RT 3618.)

² Respondent will generally refer to Gregorio and Juanita Leon by their first names or as the "Leons."

Dr. Caro and appellant frequently argued during their marriage. (20RT 3621.) Following an argument in 1994 or 1995, Dr. Caro walked up the stairs in the house and encountered appellant holding the .38-caliber gun at the top of the stairs. (20RT 3623.) Appellant held the gun up and yelled, "Aha." (20RT 3624.) Dr. Caro turned around, grabbed Joey, and drove away from the house. (20RT 3624-3625.) While driving away, appellant called Dr. Caro's car phone and asked him to return home. (20RT 3625.) Dr. Caro told her that he would not return unless she placed the guns outside of the house, and appellant agreed. (20RT 3625.) Dr. Caro turned around and saw the gun case and the gun safe in the middle of the driveway. (20RT 3626.) Dr. Caro noticed for the first time that the lid on the gun safe had been damaged, and it appeared that it had been pounded open; there were multiple scratches and pound marks around the damaged area that he had not previously observed. (20RT 3627, 3634.) The lid appeared to still close and the safe appeared to lock; the safe opened with the correct combination. (20RT 3631.)

Appellant worked as the office manager at Dr. Caro's office until August 1999. (20RT 3581, 3636.) Lisa vanEssen was appellant's assistant. (20RT 3645; 26RT 4698-4699.) In 1998 and 1999, appellant's duties as the office manager included reviewing and paying the office bills, and hiring and managing the office staff. (20RT 3637-3639.) At the office, appellant also paid the Caros' personal bills and her parents' bills with checks from the Caros' personal checking account. (26RT 4717-4718.) Appellant used a signature stamp of Dr. Caro's signature to sign the checks, and Dr. Caro never saw the incoming bills or outgoing checks. (20RT 3639.)

In the early part of 1999, the office finances were in trouble because there was insufficient incoming money to pay all of the combined expenses, i.e., the office expenses, the Caros' personal expenses, and the Leons' expenses. (26RT 4715, 4723.) Appellant and vanEssen received more

frequent calls from the office landlord about unpaid rent; at one point in 1999, the past due rent totaled about \$70,000. (26RT 4715-4716.) Other office bills also went unpaid. (20RT 3667.)

In early August 1999, Dr. Caro received a call from the office landlord about the unpaid rent. (20RT 3646.) On August 10, 1999, Dr. Caro received a three-day notice to quit from the landlord; the total amount of unpaid rent at the time was over \$44,000. (20RT 3666-3667.) Dr. Caro confirmed with vanEssen that the office owed back rent and further learned that there were other unpaid bills. (26RT 4726-4727.) Together with vanEssen, Dr. Caro then reviewed the financial records, including a handwritten ledger itemizing the expenses paid on behalf of the Leons. (26RT 4725-4726.)

Dr. Caro was surprised to discover from his review of the records that the expenses paid on behalf of the Leons were much greater than he had previously thought. (20RT 3647; 26 RT 4728, 4772.) Dr. Caro learned for the first time that he was paying for the Leons' car insurance, health insurance, utility bills, football tickets, gasoline charges, and other expenses. (20RT 3647-3648.) The financial records showed that appellant wrote numerous checks in 1998 and 1999 from the Caros' personal account that were directly payable to the Leons or paid for expenses incurred by the Leons; the total amount of these checks was slightly over \$150,000. (20RT 3648-3649, 3653-3663.) Dr. Caro believed these checks represented only a fraction of what was paid on behalf of the Leons during that time period. (25RT 4577.)

In the first or second week of August 1999, Dr. Caro told appellant not to return to the office as the office manager. He then appointed vanEssen as the manager and temporarily closed his office to formulate a budget to address the financial issues. (20RT 3646, 3669, 3677; 26RT 4700.) Dr. Caro also took check-writing privileges away from appellant

and confiscated credit cards. (20RT 3665.) Dr. Caro further told appellant that her parents needed to start paying for their own personal expenses, and he began transferring money from the Leons' Wedbush account into the Caros' personal account as reimbursement for the expenses paid on behalf of the Leons. (20RT 3665; 22RT 4041-4042; 25RT 4584; 26RT 4735.) The financial situation dramatically improved after vanEssen became the manager. (20RT 3671.)

In August 1999, Dr. Caro's marriage to appellant "was not a particularly happy one." (20RT 3695.) The financial problems and the removal of appellant as the office manager impacted the marriage. (20RT 3671.) Dr. Caro gave appellant an ultimatum and told her things needed to change or else he would leave. (20RT 3695; 21RT 3765-3766.) Appellant suggested that they receive counseling, and Dr. Caro agreed. (21RT 3766.)

Dr. Caro believed appellant was depressed, and he suggested that she see a medical professional and take Prozac. (21RT 3765-3766, 3770, 3775.) In August 1999, appellant asked Dr. Caro to prescribe Prozac for her, and he initially prescribed a low daily dosage of 10 milligrams. (21RT 3774-3775.) When appellant subsequently complained the dosage was too low, Dr. Caro increased the daily dosage to 20 milligrams and later increased it to 30 milligrams for the 10 days before her menstrual period. (21RT 3776-3777.) Appellant appeared to respond well. (21RT 3779.)

On August 27, 1999, Dr. Caro had a meeting with a divorce lawyer. (20RT 3697.) During the meeting, Dr. Caro received documents and took notes concerning the possible division of assets and potential monthly alimony payments. (20RT 3698-3706.) Dr. Caro placed all of the documents in his briefcase and kept them there. At some later point in time, appellant held the meeting notes in her hand and asked Dr. Caro if he was planning to get a divorce. (20RT 3706-3707.)

In July and August 1999, Dr. Caro began a romantic relationship with Laura Gillard, a biofeedback technician who worked in the office at the time. (20RT 3671-3673.) Dr. Caro and Gillard communicated with each other through email. (20RT 3673-3674.) In one email, Gillard expressed concern about a relationship while appellant was working in the office, and Dr. Caro indicated that he had ideas about seeing Gillard outside of the office. (20RT 3674-3675.) Dr. Caro first had sex with Gillard in the first week of August 1999, and they had sex twice that month. (20RT 3676.) During this time period, the office was closed to deal with the financial issues, and appellant was vacationing with the children and her parents at the Waterford property. (20RT 3676-3677.)

On a Saturday in August 1999, while en route to meet with Dr. Caro to review the financial records, vanEssen received a phone call from appellant. (26RT 4740.) Appellant asked if vanEssen was meeting Dr. Caro at the office, and further stated that she wanted to make sure it was vanEssen and not Laura Gillard who was meeting with Dr. Caro. (26RT 4741-4742.) VanEssen told appellant, "There's nothing going on there, Cora." (26RT 4742.)

After August 1999, appellant told vanEssen in several conversations that she did not think Dr. Caro loved her anymore and that "he was going to leave them with nothing." (26RT 4743.) In a conversation in September or October 1999, appellant was upset and told vanEssen that she discovered notes from a meeting that Dr. Caro had with a divorce lawyer. (26RT 4743, 4745.)

In another phone conversation during the same period, vanEssen asked how appellant was doing, and appellant responded, "Not good, Lis." Appellant also stated, "Sometimes I think it would just be better if I wasn't here." (26RT 4744.) After vanEssen told appellant to "[s]top it," appellant stated that she was serious and that she had been sitting on the bed holding

a gun, looking at the gun, and “thinking about doing it.” (26RT 4744.) VanEssen again told appellant to stop talking like that, and appellant replied, “What would it matter, Lis?” (26RT 4744.) VanEssen told appellant that she had four boys that needed her, and appellant again stated, “What would it matter?” (26RT 4744-4745.)

In the first part of November 1999, vanEssen had lunch with appellant, and appellant seemed fine. Appellant drank a margarita and did not appear to have any problems handling the drink. (26RT 4747.) Appellant stated that she felt the Prozac was helping her by keeping her less volatile and more even-keeled. (26RT 4748-4749.)

2. The night of November 22, 1999

On the evening of November 22, 1999, Dr. Caro returned home from work between 6:00 and 6:30 p.m. (21RT 3782.) Dr. Caro changed into a shirt, sweatpants, and sandals. (21RT 3782-3783, 3814-3116.) Consistent with his regular habit, he removed his wedding ring, strung his bracelet through the ring, and placed the ring on top of his bureau. Dr. Caro and appellant then had dinner, with both of them drinking margaritas prepared by appellant. (21RT 3783-3784.)

Joey came to the table and made a negative comment about appellant and Dr. Caro drinking margaritas. (21RT 3785-3786.) Dr. Caro did not like the tone of Joey’s comment and stated to appellant that their parents would never have allowed them to take that tone. (21RT 3787.) Appellant defended Joey and stated Dr. Caro was being harsh. (21RT 3788.) Dr. Caro told appellant that Joey needed to be disciplined. Appellant disagreed. (21RT 3789.) Dr. Caro went upstairs to Joey’s room and removed the television and a videogame system from the room; Joey was laying face-down in his bed at the time and appeared to be asleep. (21RT 3790-3791.)

Appellant and Dr. Caro continued arguing upstairs about disciplining Joey, but the argument then switched to the issue of whether Dr. Caro loved her. (21RT 3792.) Appellant stated to Dr. Caro that he did not love her, did not listen to her, and did not respect her. (21RT 3793.) Dr. Caro replied, "I'm leaving." (21RT 3794.) When Dr. Caro put on a jacket and started walking out of the master bedroom, appellant grabbed him by the shoulders. Dr. Caro kept walking away from appellant. (21RT 3795.) Appellant slid to the floor and held onto Dr. Caro's ankles. (21RT 3796.) Dr. Caro pulled away from appellant and kept walking. Juanita came up the stairs and yelled at Dr. Caro, "Get out, you brute." (21RT 3797.) Dr. Caro walked past Juanita. He entered the garage and drove away in his car, a 1989 Mercedes 420 SEL. (21RT 3797-3799.)

After Dr. Caro left, appellant told Juanita: "Now, Mom. I have no money now. I don't know what I'm going to do." (30RT 6330.) Appellant also stated: "Mom, we're going to starve now." (31RT 6538; Peo. Exh. No. 106 [Detective Wade's interview of Juanita].) At a later point in the evening, Juanita left the house and returned to her own home. (28RT 5018, 5022.) Before Juanita left, appellant stated: "Well, I guess I'm crazy like he says I am. Mom, he says I am crazy." (30RT 6331.)

Meanwhile, Dr. Caro drove to his office in Northridge. (21RT 3800-3804.) While driving, he received a call on his car phone. Believing that appellant was the caller, Dr. Caro turned down the volume on the phone. (21RT 3805.) Shortly after Dr. Caro arrived at his office, the office phone began ringing. (21RT 3808.) Dr. Caro then unplugged the two phones in the reception area. (21RT 3808-3809.)

Dr. Caro eventually answered the phone, but he hung up after hearing appellant on the other end. (21RT 3808-3809.) The phone kept ringing and Dr. Caro answered it. (21RT 3817.) Appellant asked Dr. Caro to come home; appellant was crying and seemed agitated. (21RT 3818-3819.) Dr.