

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

JORGE GONZALES et al.,

Defendants and Appellants.

No. S234377

SUPREME COURT
FILED

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Second Appellate District, Division Four, No. B255375

Los Angeles County Superior Court, No. YA076269

The Honorable Scott T. Millington, Judge

OPENING BRIEF ON THE MERITS

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OPENING BRIEF ON THE MERITS

ISSUE PRESENTED

Was the trial court's failure to instruct on murder with malice aforethought, lesser included offenses of murder with malice aforethought, and defenses to murder with malice aforethought rendered harmless by the jury's finding of a felony-murder special circumstance?

INTRODUCTION

Appellants were charged with malice murder and a robbery-murder special circumstance. The only theory of murder on which the jury was instructed was first degree felony-murder. Appellants were convicted of first-degree felony murder with a robbery-murder special circumstance. Because the trial court erroneously failed to instruct the jury on first degree premeditated murder and the lesser included offenses supported by the evidence, the true finding on the only charged felony-murder special circumstance does not render harmless the trial court's instructional error.

The critical question at trial was whether appellants intended to commit a robbery, and there was substantial evidence that warranted instructing the jury on the lesser included offenses of second degree implied malice murder and involuntary manslaughter based on the commission of a felony not inherently dangerous to human life. If the jury had been instructed on the lesser included offenses it would have learned the difference between robbery and theft, and been required to determine whether appellants specifically intended to commit robbery or a lesser offense that is not a predicate offense for felony murder. Due to the absence of instructions on first degree premeditated murder and the lesser included offenses of malice murder, the jury was left with an unwarranted all-or-nothing choice between acquittal and convicting appellants of felony murder. Since the jury was not presented

with the factual questions posed by the omitted lesser included offense instructions, the trial court's erroneous failure to instruct on the lesser included offenses of malice murder was not rendered harmless by the true finding on the felony-murder special circumstance.

STATEMENT OF THE CASE

Appellant Erica Michelle Estrada and coappellants Alfonso Garcia and Jorge Gonzalez were each charged with one count of malice murder (Count 1 - Pen. Code § 187, subd. (a)), with a special circumstance that the murder was committed during the commission of a robbery (Pen. Code § 190.2, subd. (a)(17)).¹ It was further alleged that a principal was armed with a firearm during the commission of the murder (§ 12022, subd. (a)(1)). Gonzalez was also charged with shooting at an occupied motor vehicle (Count 2 - § 246), and with various personal firearm use enhancements as to both counts (§ 12022.53, subds. (b), (c) and (d)). (3CT 456-459; 3SCT 456-459.)

Appellants were tried jointly by a single jury, and the prosecution proceeded solely on a theory of felony murder committing during the commission or attempted commission of a robbery. (See 8RT 5766.) On October 4, 2013, appellants were each found guilty of first degree felony murder committed in the perpetration of a robbery or attempted robbery, with a true finding on the robbery special circumstance. The jury returned a not true finding on the allegation that a principal was armed with a firearm. (4CT 644-645, 646-649; 9RT 7202-7205.) As to Gonzalez, the jury found all of the personal firearm use allegations to be not true as to Count 1, and it acquitted him of Count 2. (3SCT 644-647; 9RT 7203-7204.)

¹ All further statutory references are to the Penal Code.

On March 18, 2014, appellants were each sentenced to life without the possibility of parole. (4CT 698-705; 3SCT 673-676; 9RT 7546.) They appealed. (4CT 706-708; 3SCT 677.) In a published opinion filed on March 30, 2016, the judgment was affirmed by the Court of Appeal, Second Appellate District, Division Four.² On April 28, 2016, the Court of Appeal filed an order modifying the opinion with no change in the judgment. All appellants filed petitions for review. On July 13, 2016, this court granted review.

² The court also modified the abstracts of judgment to delete the parole revocation fines. (Slip opn. p. 33.)

STATEMENT OF FACTS

Prosecution Case

Erica Estrada (“appellant”) and Victor Rosales were friends with a casual nonexclusive sexual relationship. (3RT 2477, 2520-2523.) Rosales was a drug dealer who sold drugs to appellant at a discount and sometimes gave them to her. (3RT 2514, 2724; 8RT 5466-5467.) He resided with various family members including his mother Maria Murillo, and his sisters Mayra Gomez and Liliana Rosales (“Liliana”), in the rear house located at 3947 110th Street in Inglewood. (3RT 2475, 2501, 2517, 2746.)

Testimony of Anthony Kalac³

On October 6, 2009, Anthony Kalac went to the Inglewood home of Alfonso Garcia, aka Alf, to get high. (5RT 4010.) There he met Jennifer Araujo for the first time. (5RT 4012; 7RT 4936; 8RT 4552.) Kalac had used heroin before going to visit Garcia, and he used more heroin at Garcia’s house. (5RT 4013-4014; 6RT 4366.) Kalac was a heroin addict, and Garcia was a methamphetamine user. (5RT 4011, 4015; 6RT 4361.)

Garcia said they were going to a hotel down the street to hang out with someone and get high. Kalac hid his heroin at Garcia’s house, and between

³ Kalac asserted his Fifth Amendment privilege against self-incrimination, and he was granted use immunity for his trial testimony. (5RT 3934-3935, 4003-4004.) He had previously been granted immunity for his preliminary hearing testimony. (6RT 4361.)

10:00 and 11:00 a.m. Garcia, Araujo, and Kalac walked to the Crystal Inn. Garcia knocked on the door of a second floor room. (5RT 4016-4017; 7RT 4815.) Jorge Gonzales, aka Sharkie, answered the door, and the trio entered the room. Appellant was also in the room. Kalac had not previously met Gonzalez or appellant, and Garcia told him appellant was Gonzalez's girlfriend. (5RT 4018; 6RT 4251-4524.)

Kalac sat down on the couch and overheard Garcia tell Gonzalez, "Let's pack a bolt," which refers to putting meth in a pipe to smoke. (6RT 4254-4256.) Gonzalez replied, "We don't have any." (6RT 4256.) The group sat around and watched television. Kalac heard Garcia, Gonzalez and appellant talking and trying to figure out how they could obtain some methamphetamine. (6RT 4257-4258.)

After about 15 minutes Kalac used his cell phone to call his drug dealer, and Garcia spoke to the dealer in Spanish and arranged for Kalac to meet his dealer at a gas station to buy some heroin. (6RT 4259-4260.) Kalac had \$35. He went to the gas station and waited a couple of minutes. His dealer did not show up so he got a drink and snack and returned to the hotel room. (6RT 4260.) There was conversation about money, and Kalac believed "there was no money in the room." (6RT 4261; 7RT 4866, 4875-4876.)

Appellant said she had someone they could "come up on," which according to Kalac, means "to rob." (6RT 4261-4262.) Gonzalez was talking

on the phone, and when he ended his call he began talking to Garcia about “going ahead with the come up,” and they talked about robbing the man referred to by appellant. Kalac could not recall the details of the conversation. (6RT 4264; 7RT 4834, 4841-4842.) He did not understand the portion of the conversation that was in Spanish. (6RT 4268, 4270.) Appellant said the man was a drug dealer and an ex-boyfriend who had physically abused her, and Gonzalez seemed to be a bit agitated. (6RT 4265-4266.) Garcia, Gonzalez and appellant agreed to order \$150 of meth and \$50 of heroin. Appellant asked Kalac for the money he had because she needed it for a room at a nearby hotel. Gonzalez and appellant told Kalac the dealer also sold heroin, and they would give him whatever heroin they got from the robbery. Kalac gave appellant about \$28 or \$29. (6RT 4266-4267, 4377; 7RT 4822, 4835, 4843, 4866.)

After telling everyone to be quiet, appellant made a phone call and spoke primarily in Spanish. The only portions of the phone conversation Kalac understood were “30 minutes,” “across the street at the laundromat” or “corner of 112th and Prairie,” and that appellant was going to be meeting the guy. (6RT 4270-4272; 7RT 4823-4824, 4840.) Kalac heard Garcia say he was going to be a lookout for the robbery, and Gonzalez and Garcia walked out of

the room.⁴ (6RT 4272-4273, 4411-4412; 7RT 4844, 4882-4883.)

Appellant immediately started packing up the room because they were going to move to a cheaper hotel. (6RT 4275.) She made a phone call to find out the “dealer’s” arrival time, then said he would be there in 10 to 15 minutes. (6RT 4275-4276.) Kalac and Araujo helped appellant bring her bags down to her older black Cadillac. (6RT 4277.) A friend of Garcia’s came by on his bike, looking to give Garcia money for some meth. (6RT 4372-4374.) Appellant, Kalac and Araujo got in the car, and appellant drove for eight to 10 minutes in a circular route before arriving at the American Inn, which was four to five buildings south of the Crystal Inn. (6RT 4277-4278, 4378-4379.)

Araujo and Kalac waited in the car while appellant registered for a room, and when appellant returned three to five minutes later the trio brought all of the bags into a hotel room. (6RT 4278, 4378-4379.) Appellant received a phone call and told her caller she would be there in two minutes. Three to eight minutes after entering the room appellant and Araujo left. (6RT 4278-4279, 4402-4403.)

Kalac went to look for Gonzalez and Garcia. (6RT 4279, 4379.) He did not see the Cadillac at that time. (6RT 4279.) Kalac walked out of the hotel driveway, headed south on the west side of the sidewalk on Prairie, and

⁴ During the preliminary hearing Kalac testified Garcia said he was going to be a look-out for a drug transaction. (See 6RT 4412-4413; 7RT 4845.)

saw Gonzalez and Garcia walking quickly on the east sidewalk of Prairie by the laundromat. (6RT 4280-4281, 4379-4380.) He did not see appellant. (6RT 4381.) Garcia split off from Gonzalez and crossed the street directly towards Kalac, while Gonzalez proceeded north. (6RT 4281.) Garcia told Kalac to hurry up so he could get back to the American Inn. Kalac asked what happened, and Garcia, who appeared to be very nervous, replied, "Shit went bad." (6RT 4282.) Kalac and Garcia walked back to the hotel room, Garcia quickly changed his clothes, and the two men left and began walking to Garcia's house. (*Ibid.*) As they walked down 112th and Prairie there was a lot of police activity. Garcia did not talk about the incident. (6RT 4283.) Kalac retrieved his heroin at Garcia's house and then he left to go home. (6RT 4283, 4420.)

Other Testimony About The Events of October 6, 2009

On October 6, 2009, following a one night stay, appellant checked out of room 232 at the Crystal Inn located at 11163 South Prairie Avenue in Inglewood. (4RT 3322-3325, 3341; Exh. 38.) She then registered for a room at the American Inn and Suites located at 11025 South Prairie. (5RT 3987-3990; Exh. 63.) Records show that \$51 of the \$58 room charge was paid. (7RT 5139.)

Around 1:00 p.m. Rosales called Alejandro Ruiz and asked for a ride. Ruiz picked up Rosales around 2:16 p.m., and Rosales said he had received a

call from his girlfriend - appellant - who wanted to meet him for lunch, and they agreed to meet at the laundromat at the corner of Prairie and 112th Street. As Ruiz was driving westbound on 112th Street approaching Prairie, Rosales told him to park along the curb. He began to park and noticed a gray Nissan Altima traveling westbound. It passed him, then parked in front of him, and a small collision occurred between the two cars. Ruiz saw appellant accompanied by two male Hispanics walk from behind two large palm trees. When appellant was on the sidewalk she pointed out Rosales, and one of the male Hispanics walked up to the passenger door of Ruiz's vehicle, produced a small chrome semi-automatic handgun, and from a distance of three feet fired a single shot. (3RT 2792-2793; 4RT 3032, 3054.) The shooter then walked around the car and attempted to pull Ruiz out of the driver's seat, but Ruiz accelerated and drove westbound on 112th Street. (3RT 2793.)

Liliana was at home that afternoon, and after she got into her van to drive to work a car driven by Ruiz pulled into the driveway directly behind her van. (3RT 2479-2482, 2493.) Ruiz turned off his car, exited, and told Liliana her brother had been shot. (3RT 2482-2483.) Liliana ran over to Ruiz's car, saw Rosales was hurt, and asked who had hurt him. Ruiz responded, "Erica, Erica." (3RT 2484.) Liliana yelled out for her neighbors to call 9-1-1. She ran into the house to find her mother, told her Rosales had been hurt, then they both ran towards Rosales. (3RT 2485, 2507.) Gomez also ran outside. (3RT

2527, 2705.) With the help of some neighbors they were able to get Rosales out of the passenger side of the car. (3RT 2489, 2507, 2509, 2526-2527, 2708-2709.) Liliana saw Rosales had been shot in his stomach area. (3RT 2490.) Murillo heard people asking, “Who was it?” Ruiz, who was “in despair” responded in Spanish, “the girlfriend, the girlfriend.” (3RT 2508-2509, 2512-2514, 2707.) Gomez heard Ruiz say in Spanish, “It was Erica.” (3RT 2706.)

Around 2:37 p.m. Inglewood police officers received a radio call about a shooting victim in the area of 110th and Doty. Officers began arriving at 2:40 p.m. (3RT 2738-2739, 2743-2744.) Rosales was laying on his back in the driveway of 3749 West 110th Street next to a Oldsmobile Alero, with some people around him. He was gasping for air, his breathing was shallow, and he had a single gunshot wound to his upper right chest. (3RT 2749-2751, 2788-2789; 4RT 3061-3062.) Paramedics arrived, treated Rosales, and transported him to the trauma center at Harbor-UCLA. (3RT 2490-2491, 2510-2511, 2753-2754, 2789.) Rosales later died at the hospital. (3RT 2754-2755.)

Once the paramedics took over at the scene, Ruiz, who appeared to be in shock, told Officer Fernando Vasquez he had witnessed the shooting. (3RT 2789.) After obtaining Ruiz’s statement Vasquez conducted a patdown search of Ruiz, but found no weapons. He then took Ruiz to the corner of Prairie and 112th. (4RT 3016-3017.)

Gomez volunteered to take the police to appellant's residence because she did not know appellant's exact address. (3RT 2711.) She rode with the officers and directed them to 12536 Truro in Hawthorne. (3RT 2712-2713, 2774-4777, 2780, 2782.)

The Apprehension of Appellants

At 7:14 p.m. on the day of the shooting, appellant and Gonzalez were arrested outside appellant's home. (3RT 2797-2798, 2799; 4RT 3018, 3064-3065.) Gonzalez had 25 cents on his person at the time he was booked. (5RT 3912-3913.) A gunshot residue test was performed on Gonzalez, and the sample was positive. (3RT 2800-2802; 4RT 3018-3022, 3044-3045, 3048-3049; 5RT 3623-3624, 3627.) Appellant was also given a gunshot residue test, but no particles were detected. (4RT 3023-3026, 3065, 3067, 3070; 5RT 3613, 3619-3623.)

On December 17, 2009, Garcia was arrested at a residence in Inglewood after he attempted to flee from officers when they arrived with an arrest warrant. (5RT 3992, 3996.)

Investigation of the Shooting

Police recovered Rosales's cell phone between the center console and passenger side seat of Ruiz's vehicle, and a .22 caliber shell casing was recovered from the passenger floorboard. (4RT 3123-3114, 3122; 5RT 3955, 3968; 7RT 4930-4934, 5112.)

An autopsy of Rosales was conducted on October 8, 2009. The medical examiner concluded the cause of death was a gunshot wound to the right side of the chest. (5RT 3648-3648, 3653.) A .22 caliber bullet was recovered from Rosales's left back. (5RT 3659, 3954-3955.) Rosales had stippling on his right hand and wrist which indicate the firearm was discharged within two feet the victim. (5RT 3649, 3655.) Toxicology tests were positive for methamphetamine and amphetamine. (5RT 3656.) The handgun used in the shooting was not recovered. (8RT 5431.)

Homicide Detective Kevin Lane saw Gonzalez on the day of the shooting and did not notice any injuries or stippling on him. (7RT 4927-4928.) During his investigation of the case Lane drove in a circular route from the Crystal Inn to the American Inn, and at 2:00 p.m. the drive took 3 minutes, 44 seconds. (7RT 5104, 5106.) At 8:00 a.m. the same route took him five minutes and five seconds. (7RT 5127.) According to Lane it takes about 30 seconds to drive from the American Inn to corner of 112th and Prairie, and two to three minutes to walk that distance. (7RT 5105.) A drive from Rosales's home to the location where the shooting occurred takes about two minutes. (7RT 5140.)

Lane obtained surveillance video footage of the Crystal Inn from October 6, 2009. (Exh. 39; 4RT 3320, 3325-3330; 7RT 5110.) For the period on the video time-stamped 14:06:27 to 14:07:08, an individual is seen walking

towards Prairie. Around 14:07:08, an individual is seen walking across the walkway of the motel. (4RT 3336.) From 14:17:11 to 14:21:28, multiple individuals are shown entering a vehicle and then leaving a parking stall of the hotel. (4RT 3338.)

According to records from Verizon Wireless, between 2:12:12 and 2:28 p.m. on October, 6, 2009, two phone calls were made from Garcia's phone to Rosales's phone, and three calls were made from Garcia's phone to Araujo's phone. Garcia's phone also received one call from Rosales's phone and two calls from appellant's phone. The cell towers that picked up the signal from Garcia's phone were located approximately within one mile of 112th Street and Prairie Avenue, with a range between half a mile to a mile and a half. (4RT 3353, 3355, 3357, 3359, 3364-3371, 3374, 3378-3380; 5RT 3928; 7RT 4930-4940, 5102-5105; Exhs. 40, 41.) No calls were made to or from Garcia's phone from 2:28 p.m. to 2:37 p.m. (4RT 3371-3372.)

On October 22, 2009, appellant telephoned her aunt, and the call was recorded by the jail inmate telephone monitoring system. (6RT 4290; 7RT 5109, 5127.) During the call appellant said she had used Jennifer's [Araujo's] cell phone to call Rosales, but said she "called private." (Exh. 69 - 4CT 540-541.)

Testimony of Stephanie San Angelo

Stephanie San Angelo previously dated Kalac for several years and

they lived together intermittently, but she could not recall if they were dating in 2009. (7RT 4891-4892, 4910.) Within a week after the shooting San Angelo heard things about the incident. (7RT 4892-4893, 4904.) After speaking to Kalac's friend "Kevin," she spoke to Kalac about the incident. (7RT 4893-4894.)

On February 1, 2010, San Angelo went to the Inglewood Police Department and reported to Detective Michael Han what she had learned. (7RT 4892-4894, 4913-4914, 4920.) She told Han the following: Kalac said he had gone to buy dope with "Alf" and another male and female were present; they intended to jack somebody - the girl's boyfriend or ex-boyfriend or father of her child; they contacted him, he came out, they went down to meet him while Kalac stayed in the room, and either the two guys or the two guys and the female "went down tried to jack him," but the guy was not giving up and either tried to run or drive away, and they shot at him and hit him. (7RT 4895-4896, 4911-4912.) She also said the driver of the vehicle was shot and the passenger tried to drive away. (7RT 4911.) San Angelo did not know how Kalac found out about the shooting. She asked Kalac if he had walked past the dead body and not said anything, and Kalac replied, "Yeah, I didn't care about it. I cared about my dope." (7RT 4896.) Kalac's response bothered her so much she went to the police. (7RT 4909.)

San Angelo did not recall Kalac telling her anything about getting a

gun. She heard someone had given Kalac the gun to dispose of, but she had no idea regarding the identity of that individual. (7RT 4906.)

Han's Testimony About His Conversation With San Angelo

On February 1, 2010, Han spoke to an "anonymous informant" regarding the Rosales homicide. Han was not a homicide detective, so he sent an e-mail to several homicide detectives about his conversation. (7RT 4914-4916, 4919.) The e-mail stated the informant learned about the incident from Kalac; Kalac talked about a robbery of a drug dealer; "Alf" or "Ralph" was the mastermind of the robbery; around October of 2009 that individual, Kalac, another male, and a female executed the drug dealer who was in a car in the area of Prairie and 113th Street; and afterwards "Ralph" gave the gun to Kalac for disposal purposes. (7RT 4920-4921.)

After sending the e-mail Han made some handwritten notes. (7RT 4921-4922.) He had taken down the name "Stephanie" and a 310 phone number with an address of 4475 141st Street in Hawthorne, but he had not included that information in his e-mail. (7RT 4923-4924.)

Additional Testimony of Kalac

Kalac denied seeing a gun any time on the day of the shooting. (6RT 4357, 4408, 4413; 7RT 4833-4834.) He also denied hearing anyone mention a gun when he was at the Crystal Inn. (6RT 4414; 7RT 4834.)

On March 3, 2010, Kalac met with Detective Lane at the station and

gave a statement about the incident. (6RT 4284.) He may have made some assumptions when giving his statement. (7RT 4836.) Kalac had learned from Araujo that Gonzalez and appellant were under arrest and charged in the case. (7RT 4866-4867.) He had stopped using drugs a couple of months after the shooting. (7RT 4867, 4876.)

Kalac said appellant told him she knew some guy they could rob for meth, but those were not the exact words spoken. He used the word “gist” a lot during the interview. Kalac could not remember exactly what appellant said. (6RT 4373.) Garcia, Gonzalez and appellant were talking to each other in Spanish, which Kalac could not understand. (6RT 4374-4375.) When Lane asked Kalac, “In reality you don’t know what they were actually planning at the time,” Kalac responded, “I don’t know what they were doing.” He claimed he would not have wanted any part of a robbery. (6RT 4375.)

The only details Kalac could give to evidence a robbery had been planned were that appellant and coappellants were talking about not having any money, and they were trying to figure out someone they could call and “come up on.” (7RT 4886.) To Kalac, “come up” is robbing someone, which it is what he used to do. (7RT 4886.) A long time ago when he was using drugs, Kalac had “come up” on someone to rob them. He did so alone, without a gun or other weapon, and he never used physical violence. Kalac simply grabbed the drugs from the dealer and ran. (7RT 4864, 4872.)

Kalac told Lane he did not know a gun was involved and did not find out until after the fact when he spoke to Araujo. (6RT 4377.) He said that two and a half weeks before the interview he learned from Araujo that the drug dealer who was shot during the incident had died. (6RT 4365.) During the interview Kalac asked Lane, “What are you gonna charge me with, accessory?” (7RT 4812.)

Testimony of Detective Lane Regarding His Interview of Kalac

During Kalac’s interview with Lane, Kalac did not use the phrases “come up” or “jack this fool.” (7RT 5122, 5188-5189.) He said appellant set up the robbery by calling her ex-boyfriend and arranging the meeting at 112th and Prairie, and Gonzalez told him the person bringing the drugs would have heroin, and whatever heroin they got they would give to Kalac. (8RT 5438-5439.) After appellant’s phone call they moved from the Crystal Inn to the American Inn. (8RT 5439.) Kalac heard the reason they were going to rob Rosales was because he had beaten up appellant. (7RT 5213.) Lane asked Kalac how he knew they were going to rob the man, and Kalac replied, “I have no idea.” (8RT 5456.) Lane did not get any specifics about the planning of the so-called robbery or anything that would evidence a robbery. (7RT 5214.)

Lane was aware the “anonymous informant” had provided information that Garcia gave Kalac the gun and told him to hide it. (8RT 5453.) He asked if Kalac had a conversation with Garcia about disposing of the gun, but Kalac

said he never saw or heard a gun, and did not know anything about it. (8RT 5437, 5453-5455.) Kalac told Lane that Araujo told him [the shooter said], “If you drive off, I’m going to shoot. Give me your dope.” (8RT 5451.)

During the interview Kalac gave inconsistent statements about when he learned the victim died. At one point Kalac said he found out a couple of days after the incident, and at another point he said he found out two or three weeks before March 3rd. (8RT 5445-5446.)

Defense Case⁵

A defense investigator interviewed Liliana in March of 2012. Liliana said she was aware Rosales sold drugs, and he sold drugs to appellant at a discount or gave them to her for free. (8RT 5466-5467.)

Gonzalez testified on his own behalf. He worked as a machinist from 1989 to the beginning of 2009, when he stopped due to his health. (8RT 5469-5470.) He began living off his savings of \$46,000, and in February 2009 he began working part-time as a care giver for a paralyzed man, Ernesto Corral. (8RT 5469-5470, 5757, 5759.) Corral testified and confirmed that appellant worked for him. (8RT 5756-5757.)

On October 6, 2009, Gonzalez had money, as Corral paid him at least \$200 at the beginning of each month. (8RT 5471, 5757, 5761.) Gonzalez had

⁵ Appellant and Garcia did not call any witnesses or present any evidence in their defense.

about \$165 on his person at the Crystal Inn. He denied planning to rob anyone that day, and testified there was no discussion at the Crystal Inn about robbing anyone. (8RT 5472.)

Gonzalez met appellant in August or September of 2009 through Araujo. (8RT 5480.) They became friends, hung out together at bars, and socialized. About a week before October 6, 2009, they became intimate but did not have a serious or exclusive relationship. (8RT 5481.) Gonzalez was aware appellant had some type of relationship with Rosales. (8RT 5482.)

Prior to the shooting Gonzalez met Rosales on two occasions. They first met when Rosales and appellant stopped by a hotel where Gonzalez was staying, and Rosales sold him drugs at a discount because he knew appellant. (8RT 5478, 5522.) The second time occurred about two weeks before October 6, 2009, when appellant was hanging out with Gonzalez at a hotel. Rosales pulled into the hotel, Gonzalez and appellant walked downstairs, Rosales sold them some drugs, and after Gonzalez went back to the room appellant stayed downstairs with Gonzalez. (8RT 5478.) Although Rosales was not talkative with Gonzalez, he did not appear to have any problems with Gonzalez. (8RT 5479.)

On October 5, 2009, Gonzalez spent the night at the Crystal Inn in a room paid for by appellant. She had given Gonzalez a surprise birthday party in the room that night. (8RT 5473.) At one point appellant left to be with