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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

AIDA SANDOVAL,

Defendant and Appellant.

B187977

(Los Angeles County  
Super. Ct. No. BA280950)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Lance A. Ito, Judge. Modified in part and affirmed.

Cannon & Harris and Donna L. Harris, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Kyle  
S. Brodie and David E. Madeo, Deputy Attorneys General, for Plaintiff and  
Respondent.

## PROCEDURAL BACKGROUND

On April 26, 2005, an information was filed charging appellant Aida Sandoval and Yessenia Romero<sup>1</sup> in count 1 with the murder of Belen Dercio (Pen. Code,<sup>2</sup> § 187, subd. (a)); in count 2, with the murder of Rolando Rojas (§ 187, subd. (a)); and in count 3, with the attempted willful, deliberate, and premeditated murder of Salvador Ramirez (§§ 187, subd. (a), 664). Under counts 1 and 2, the information alleged that appellant and Romero had committed the murders by lying in wait (§ 190.2, subd. (a)(15)); furthermore, under each count, it alleged that a principal involved in the offense had been armed with a firearm (§ 12022, subd. (a)(1)).

Appellant pleaded not guilty, and denied the special circumstances and firearm allegations. On October 19, 2005, a jury found appellant guilty of voluntary manslaughter regarding Dercio and Rojas, and guilty of attempted voluntary manslaughter regarding Ramirez. It also found the firearm allegations not true.<sup>3</sup> The trial court imposed a total sentence of 14 years and four months in prison, composed of the high term of 11 years for count 1, a consecutive term of two years for count 2, and a consecutive term of one year and four months for count 3. This appeal followed.

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<sup>1</sup> Romero and appellant were tried together. Romero is not a party to this appeal.

<sup>2</sup> All further statutory citations are to the Penal Code, unless otherwise indicated.

<sup>3</sup> The jury found Romero guilty of involuntary manslaughter regarding Dercio and Rojas, and found the firearm allegations not true.

## FACTS

### *A. Prosecution Evidence*

Early in the morning of February 4, 2003, appellant, Romero, and Rolando Rojas were in the El Dorado bar in Los Angeles. Erica Arellano, who was Rojas's niece, lived with Rojas in a building near the El Dorado. When appellant and Romero became involved in fights with women known as "Green Eyes" and "The Tweaker," Arellano heard screaming and went down to a parking lot adjoining the El Dorado, where a crowd had formed. There she saw Rojas try to stop appellant and Romero from fighting with Green Eyes. After the fight ended, appellant asserted that the fight was Rojas's fault. According to Arellano, appellant said that "she was going to bring some gang over to fuck [Rojas] up, to kill him," and she referred to a gang named "Florence."

After the fight, appellant and Romero decided to recruit someone to "jump" Rojas. The El Dorado was closed during the day on February 4, 2003, and both were too sore from the fight to do anything. The next day, appellant and Romero attended a funeral for a slain member of the Florencia gang, and also visited members of the Compton Trece (or La Tres) gang. They found several individuals willing to help them, including Juan Negrete, Miguel Del Rio, and Maria (or Mary) Gonzales.

On February 5, 2003, appellant and Romero, accompanied by these individuals, returned to the El Dorado bar in a van, which they parked near the bar. At 10:00 p.m. the same evening, Salvador Ramirez entered the El Dorado bar with his brother, Belen Dercio.<sup>4</sup> Both wore baseball caps.

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<sup>4</sup> Belen's last name is sometimes spelled, "Dircio," in the record. Salvador Ramirez testified that his own last name was "Dircio Ramirez," or alternatively, "Dircio." For simplicity, we use "Dercio" as Belen's last name and "Ramirez" as Salvador's last name.

After 11 p.m., Rojas went to the El Dorado. From a residence window, Arellano saw appellant or Romero (or possibly both), together with a man, standing near a pay phone close to the front of the El Dorado. Appellant or Romero (or possibly both) then walked toward the rear of El Dorado. While appellant and Romero were in the El Dorado, Romero observed Rojas, and she sent Gonzales outside to tell the others that Rojas was wearing a hat. She subsequently noticed that other men were also wearing hats.

At approximately 11:30 p.m., Los Angeles Police Department officer Cesar Guitron was on motorcycle patrol near the El Dorado. As he drove past the bar, he saw appellant and Romero near the front door with some men, including Rojas. Negrete approached the group, raised a gun, and fired several shots at Rojas, thereby killing him. After Guitron turned his motorcycle, appellant, Romero, Negrete, and another male fled toward the van parked down the street.

Arellano heard gunshots, and ran to the front of the El Dorado, where she found Rojas on the ground. When Ramirez and Dercio heard the shots outside the bar, they left through the back door. As they walked through an alley behind the bar, Del Rio shot Dercio and then Ramirez with a rifle. Arellano, who had gone to a pay phone near the El Dorado to call 911, saw the shooting. Dercio died of two gunshot wounds to the head. Ramirez was hospitalized for nonfatal injuries.

Investigating officers later found a .22 caliber handgun on the tire of a car parked near the van, and a rifle inside the van. The recovered handgun and the bullets found in Rojas's and Dercio's bodies were destroyed due to a clerical error before they could be tested.

After appellant and Romero were arrested, they made statements during interviews by investigating officers. These interviews, which had been recorded, were played to the jury. Both admitted that they wanted to have Rojas beaten up.

Appellant stated that there was an agreement that no guns were to be used except in self-defense.

It was stipulated that Negrete and Del Rio had previously been convicted of the murders of Rojas and Dercio, and the attempted murder of Ramirez.

### *B. Defense Evidence*

Romero, who testified on her own behalf, stated that she and appellant worked at the El Dorado, where they were paid to talk to customers, dance with them, and encourage them to buy drinks. According to Romero, during the fight between appellant and The Tweaker, Arellano intervened against appellant, and Rojas played some role in the fight. The next morning, appellant and Romero decided to return to the El Dorado to recover money that the owner owed Romero, and to fight with The Tweaker and Arellano if they encountered them.

Romero further testified that several individuals -- some affiliated with gangs -- offered to accompany them, and they all drove to the El Dorado together. Romero was not familiar with all these individuals. She knew that there were guns in the vehicle, but she and appellant made it clear that no one was to use a gun. According to Romero, she hoped that she could recover the money owed to her and leave the El Dorado without any trouble. She also denied that appellant said anything about “jumping” Rojas.

Romero further testified that the El Dorado’s owner declined to pay the money owed her, and tried to persuade her and appellant to stay. Later, appellant and Rojas talked at the front of the El Dorado while Romero stood nearby. One of the men accompanying Romero and appellant then approached Rojas and told him not to move. When Rojas reached for his pocket, the man shot him.

Blanca Ramos, who is Romero's mother, testified that Romero had been working in Los Angeles to earn money so that she could move to Las Vegas, where three of Romero's children lived with Ramos.

Daniel Mendoza, a private investigator, testified on behalf of appellant. He had taken measurements and photos of the area surrounding the El Dorado, and indicated that the pay phone in front of the El Dorado was not visible from the windows in Arellano's residential building.

### *C. Rebuttal*

Los Angeles Police Department Detective Jesus Linn denied that he made any improper threats or promises to appellant or Romero when he interviewed them after their arrest.

## **DISCUSSION**

Appellant contends that (1) the trial court improperly admitted photographs of Dercio's wounds, (2) an improper sentence was imposed on count 3, and (3) there was sentencing error under *Blakely v. Washington* (2004) 542 U.S. 296.

### *A. Admission Of Photographs*

Appellant contends that the trial court abused its discretion under Evidence Code section 352 by admitting two photographs of Dercio's wounds. "The admission of photographs of a victim lies within the broad discretion of the trial court when a claim is made that they are unduly gruesome or inflammatory. [Citations.] The court's exercise of that discretion will not be disturbed on appeal unless the probative value of the photographs clearly is outweighed by their prejudicial effect. [Citations.]" (*People v. Crittenden* (1994) 9 Cal.4th 83, 133-134.)

The two photographs depict Dercio's head wounds at the crime scene: One displays a large entrance wound at the rear of Dercio's head, and the other shows a coroner's investigator pointing into Dercio's mouth at an exit wound. Appellant's counsel objected to their admission under Evidence Code section 352, contending that their prejudicial nature clearly outweighed their relevance. He argued that they merely confirmed the coroner's testimony, which was not in dispute, but were "absolutely gruesome." The prosecutor responded that they were circumstantial evidence of intent, and that he had advised the jury during voir dire that graphic photographs would be introduced, not to arouse disgust or sympathy, but to demonstrate the viciousness of the attack.

The trial court overruled the objection. Noting that the photographs, while graphic, were "not anywhere close to the worse homicide photographs [he had] ever seen," the trial judge carefully articulated his reasons for denying the motion: "The issue is, does the prejudicial value outweigh the probative value in this case. There is circumstantial probative value from these photographs. It does tell the manner in which this man was executed. . . . ¶ The fact that this gun was put to this man's head and essentially had his head blown off goes to the nature of the case. The prosecution has the obligation to prove the malice aforethought. That's one of the elements of murder. And the manner in which the death is inflicted goes to whether or not there is malice aforethought. . . . ¶ So it clearly is substantial and I think for the prosecution's case, it is essential for probative value."

We discern no abuse of discretion. The trial court may properly admit photographs displaying a victim's wounds to establish malice or intent, even though oral evidence describing these wounds has also been admitted. Thus, in *People v. Crittenden*, *supra*, 9 Cal.4th at pages 131-135, the defendant unsuccessfully objected to the admission of several photographs depicting a victim's partially clad body with a knife protruding from it, another victim's body

in blood soaked clothes, and the victims' traumatic head injuries. The court concluded that these photographs, though unpleasant, were properly admitted because they were highly probative of intent, planning, and deliberation, notwithstanding the undisputed testimony from the coroner about the victims' wounds. (*Ibid.*; see also *People v. Allen* (1986) 42 Cal.3d 1222, 1255-1258 [no clear abuse of discretion in admitting close-up photographs of victims' head wounds, given their relevance to the prosecution's theory that the killings were done "in an 'execution-style fashion.'"]])

Here, the photographs tend to show that Del Rio executed Dercio in a deliberate fashion, and thus gave substantial support to the prosecution's theory that appellant and Romero returned to El Dorado with a premeditated plan to kill Rojas. Furthermore, our independent review of the photographs convinces us that they are unpleasant, but not unduly shocking or inflammatory. Accordingly, the trial court did not err under Evidence Code section 352 in admitting them.

Appellant argues that Dercio's wounds are irrelevant to appellant's intent because (1) Del Rio -- and not appellant -- shot Dercio, and (2) there is no evidence that appellant knew of Dercio's presence in the El Dorado or that she acted with any intent that he be killed. We disagree. The manner in which Del Rio shot Dercio was probative of appellant's premeditated intent to kill Rojas. On this matter, the prosecutor advanced the theory that appellant recruited several individuals to surround the El Dorado with directions to kill Rojas, who was identified to them as a man wearing a hat. Given that Dercio also wore a hat, the wounds to his head suggesting an execution-style killing corroborated this theory.<sup>5</sup>

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<sup>5</sup> Appellant also contends that admission of these photographs violated her rights to due process under the California and United States Constitutions. However, she failed to raise an objection on these grounds before the trial court. As our Supreme Court recently explained in *People v. Partida* (2005) 37 Cal.4th



In sum, the photographs were properly admitted.

*B. Improper Sentence On Count 3*

Appellant contends that (1) the trial court erred in determining the term of imprisonment for her conviction for attempted voluntary manslaughter under count 3, and (2) the abstract of judgment incorrectly states that her conviction under count 3 was for attempted murder. We agree with both contentions.

Under section 1170.1, which governs the imposition of consecutive sentences for multiple convictions, the trial court was obliged to impose a consecutive term of one-third of the middle term for attempted voluntary manslaughter. (§ 1170.1, subd. (a).) Because the middle term for attempted voluntary manslaughter is three years (§§ 193, subd. (a), 664, subd. (a)), the correct term for count 3 is one year.

The reporter's transcript of the sentencing hearing discloses that the trial court imposed a consecutive sentence of 18 months on count 3. However, the minute order from this hearing states that a consecutive term of one year and four months was imposed on count 3. The abstract of judgment also recites a term of one year and four months, and incorrectly identifies count 3 as a conviction for attempted murder. Respondent concedes that the trial court imposed an improper term on count 3, and that the abstract of judgment contains errors regarding this count.

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428, 434-439, appellant may therefore raise only a very narrow due process contention on appeal, namely, that the erroneous admission of the photographs under Evidence Code section 352 rendered her trial fundamentally unfair. Because the trial court made no such error, appellant's due process contention fails.

### C. *Blakely* Error

Appellant contends that there was sentencing error under *Blakely, supra*, 542 U.S. 296, arguing that the trial court improperly imposed the high term on count 1 and consecutive sentences on counts 2 and 3 in the absence of suitable jury findings. This contention fails under *People v. Black* (2005) 35 Cal.4th 1238.<sup>6</sup> Appellant argues at length that *Black* is wrongly decided, and urges us to depart from it. Unless and until the United States Supreme Court rules otherwise, it is binding precedent. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

### DISPOSITION

The judgment is modified to reflect that appellant's consecutive term of imprisonment on count 3 for attempted voluntary manslaughter (§§ 192, subd. (a), 664) is one year. In all other respects, the judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment that reflects this modification, and that identifies the conviction under count 3 as one for attempted voluntary manslaughter.

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<sup>6</sup> Respondent contends that appellant has forfeited this contention by failing to raise it before the trial court. However, appellant was sentenced after *Black* issued, and before the United States Supreme Court decided to review *Black* in *People v. Cunningham* (Apr. 18, 2005, A103501) [nonpub. opn.], cert. granted *sub nom. Cunningham v. California* Feb. 21, 2006, No 05-6551, \_\_\_ U.S. \_\_\_ [126 S.Ct. 1329, 164 L.Ed.2d 47].) Because an objection under *Blakely* would have been futile when appellant was sentenced, we decline to find a forfeiture. (*People v. Abbaszadeh* (2003) 106 Cal.App.4th 642, 648-650.)

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.