

NOT TO BE PUBLISHED  
IN OFFICIAL REPORTS

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION THREE

FILED

OCT 28 1985  
Court of Appeal - First Dist.  
By RON D. BARROW, Clerk  
DEPUTY

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff and Respondent,

v.

A024654

P. F. LAZOR,  
Defendant and Appellant.

(Super. Ct. No. 87874  
County of Santa Clara)

In re

P. F. LAZOR,

On Habeas Corpus.

A028765

Defendant and appellant P. F. Lazor was convicted by a jury of second degree murder (Pen. Code, § 187).<sup>1/</sup> Additionally, an allegation that appellant used a firearm in the commission of said offense within the meaning of sections 12022.5 and 1203.06 was found to be true. Appellant appeals from the judgment of conviction. Appellant petitions the court for a writ of habeas corpus. Said petition has been con

THE "APPEAL" DECISION,  
COVER PAGE

In re P. F. Lazor, owner of property located at 12345 Road in Los Gatos. The half

1. All statutory references are to the Penal Code unless otherwise specified.

EXHIBIT  
SS  
3 PAGES

Meanwhile, John Allred (Garnier's nephew), the victim, moved into the front bedroom which had been occupied by Scherschel. Shortly thereafter, on October 5, 1982, Allan Wallis moved into the residence and shared the back bedroom with Ellis. Appellant told both Ellis and Wallis that the pantry room next to the kitchen was off limits to tenants of the residence and was his private office. According to Wallis, appellant was not living at the residence.

In early October appellant asked Wallis and Ellis to assist him in taking Scherschel's property from the dining room to the garage. Ellis was trying to move Scherschel's waterbed, he had an BB gun. Wallis also had the gun. According to both men, appellant picked up the gun and took it to the kitchen with a small cardboard box. Five to fifteen minutes later, appellant returned.

ADDED COMMENTARY

THIS REFERENCE TO DONNA FERNANDEZ' TESTIMONY THAT LAZOR WAS HATEFULLY ANGRY AT ALLRED, WAS THE FOUNDATION FOR THE ELABORATE PRESENTATION THAT LAZOR HATED ALLRED AND HIS ANGER TOWARD HIM ERUPTED INTO MURDER. THE CASSETTE TAPE THE POLICE "LOST", PROVED THAT THIS TESTIMONY BY FERNANDEZ WAS FABRICATED PERJURY

... complained that rental money was not being paid on time. Garnier met with appellant and instructed him that he should only use the rear door.

Donna Fernandez, who lived behind the Roberts Road residence, testified that she met appellant in October 1982.

At this time, he allegedly told her that he was upset that Garnier's nephew, John Allred, was moving in and felt that he was losing control over the house. She said that appellant appeared very angry and upset. Appellant told her that he was living in Fremont and had a "room next door."

Ellis testified that Allred told him that he was upset with appellant coming through the front door and that appellant could use the back door like he was supposed to. Wallis testified that Allred told him that he hated appellant and that if he ever came back into the house he would "kick him out of the house."

ADDED COMMENTARY

EFFECT OF DONNA FERNANDEZ' FABRICATED TESTIMONY OF LAZOR'S ALLEGED ANGER AND HATRED TOWARD ALLRED

QUESTION: WOULD FERNANDEZ HAVE SUBJECTED HERSELF TO PROVABLE PERJURY CHARGES, HAD SHE NOT BEEN ASSURED BY THE PROSECUTION THAT THEY DESTROYED THE TAPE THAT PROVED THE PERJURY AND WOULD NOT CHARGE HER WITH PERJURY?

... Allred  
... call, Ellis looked at the outside portion of the front door and noticed that it had been damaged as the boards were bowed in toward the living room.

Allred later told Wallis that he had stood behind the front door to see if appellant would come without knocking. When appellant entered, Allred then allegedly confronted him and then threw him out the front door and locked it. Allred allegedly told Wallis that appellant kicked the door in and at