

NOT TO BE PUBLISHED  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.  
RON D. BARROW, Clerk  
By \_\_\_\_\_  
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. Said petition has been considered.

THE "APPEAL" DECISION,  
COVER PAGE

In Appellant is the owner of property located

in Los Gatos. The half

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

EXHIBIT  
tabbler  
QQ  
3 PAGES

ADDED COMMENTARY

HERE, THE APPEAL JUDGES ACKNOWLEDGE THE KEY FACTOR THAT SCHROEDER STIPULATED TO "SUBSTITUTING" (I.E., SWITCHING IN) THE FALSIFIED WRITINGS IN PLACE OF THE GENUINE ONES TO THE JURY -- IGNORING THE FACT THAT LAZOR HAD VIGOROUSLY PROTESTED IT. AND...

... the jury, the prosecution was able to get into evidence the fact that the log contains four entries which state "Dictator Garnier," six entries which state "Garnier Contract," and an entry on the day of the murder (Jan. 10) which says "Get Dictator." The same entries were also put into writing as a sanitized version of the log, which was then admitted into evidence as well and made available to the jury at the end of trial. Counsel for both sides stipulated to the admissibility of the written evidence.

During closing argument, defense counsel attempted to explain the subject entries by indicating that appellant's use of the term "dictator" was merely in reference to his dictating machine. In rebuttal, the prosecution told the jury that the entry for January 10, the day of the shooting, stated "Get Dictator," which is the way the sanitized version reads.

On appeal, appellant points out that the full entry for January 10 states: "Get Dictator GE Servicenter." Appellant contends that by the prosecution leaving out the "GE Servicenter" portion of the entry in closing argument, it was a purposeful omission by the prosecution which misled the jury and calls for reversal. We disagree.

First of all, it would not be proper for the prosecutor to make reference to a part of the document excluded by stipulation. Secondly, we do not view the omission to be

ADDED COMMENTARY

HERE, THE APPEAL JUDGES MAKE VAGUE REFERENCE TO THE LAW THAT, WHEN A DEFENDANT "STIPULATES" TO SOME ACT IN TRIAL, THAT FORECLOSES AND WAIVES ANY RIGHT TO LATER APPEAL OR COMPLAIN ABOUT THAT MATTER. WHAT THEY IGNORED HERE IS THAT THIS WAS A WHOLE SCHEME OF FRAUD AND BETRAYAL AGAINST THE DEFENDANT PERPETRATED BY THE DEFENSE ATTORNEY; AND THAT SUCH FRAUD SUPERCEDES THE NORMAL "STIPULATION/ APPEAL WAIVER" RULE

More importantly, however, we discern no error in this regard on the part of either the trial court or the prosecution. It appears that defense counsel stipulated to both the proposal to provide the jury with a sanitized version of the log and the sanitized version itself. Indeed, the record indicates that counsel actively sought a sanitized version so as to keep the log in its entirety out of the hands of the jury. Appellant thus waived his right to object to the admission of this evidence and his allegations of prosecutorial misconduct are not supported by the record. Similarly, defense counsel's belated attempt to object after trial and after the jury had been dismissed for deliberations, was ineffectual. (Evid. Code, § 353, subd. (a); Witkin, Cal. Evidence (2d ed. 1966) Introduction of Evidence at Trial, § 1285, p. 1188.)