

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA DANIEL TUGGLES et al.,

Defendants and Appellants.

C054250

(Super. Ct. No. 05F02470)

ORDER MODIFYING OPINION
AND DENYING REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on October 29, 2009, be modified as follows:

On page 11, after the second paragraph, insert the following six paragraphs:

Testifying on his own behalf, Tuggles denied ever owning a gun or threatening to kill Romero. Instead, Tuggles considered Romero to be a friend even while they "drifted apart" after the fizzled fight. Tuggles could not explain how the shotgun butt and marijuana paraphernalia discovered by the police made their way into the attic of his house.

Around 6:00 or 7:00 p.m. on the night of Romero's murder, Tuggles began hanging out with his girlfriend, Sabrina O'Neal, at Neves's home. Tuggles was drinking and smoking marijuana. Although Tuggles later went to the liquor store with his friends, he did not go anywhere near Romero.

Upon returning from the liquor store, Tuggles saw Mitchell and Nagy compare their guns inside Neves's home. Nagy showed his sawed-off shotgun, and Mitchell displayed what looked like an assault rifle. Mitchell put his rifle away, but Nagy continued to hold on to his shotgun.

When Tuggles went outside to smoke a cigarette, he heard Shands report that Romero's group drove by. Mollett said they were "punking out" and that he would fight Romero's group himself. Mollett, Mitchell, Neves, Shands, and Tuggles ended up driving over toward Charbono Street. Tuggles did not bring a shotgun.

Outside Olivas's house, Mollett, Mitchell, and Neves got out of the car and walked toward Romero and Zamarron. Mollett kept moving in Romero's direction, but Mitchell and Neves retreated toward Shands's Bronco. Tuggles heard two shots ring out. When Mollett got back into the Bronco, Tuggles saw him carrying a long gun. Tuggles had not given him the gun. Shands was "flipping out" as he drove away. Tuggles was in a state of shock.

After Shands parked the Bronco, Tuggles got a ride from his mother to his grandmother's house. Tuggles stayed there until he turned himself in to the police on Tuesday morning.

This modification does not change the judgment.

The petition for rehearing is denied.

_____ SIMS _____, Acting P. J.

_____ ROBIE _____, J.

_____ BUTZ _____, J.