

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,)	
)	
Plaintiff and Respondent,)	
)	S097558
v.)	
)	
TODD JESSE GARTON,)	
)	
Defendant and Appellant.)	Shasta County
)	Super. Ct. No. 98F4493
_____)	

A jury in Shasta County convicted defendant Todd Jesse Garton of first degree murder and conspiracy to murder his wife, Carole Garton, and her fetus, and conspiracy to murder his codefendant's husband, Dean Noyes. (Pen. Code, §§ 182, subd. (a)(1), 187, subd. (a); all undesignated references are to this code.) The jury found true special circumstance allegations that defendant committed multiple murders, that he committed the murders for financial gain, and that a principal in each offense was armed with a firearm. (§§ 190.2, subds. (a)(3), (a)(1), 12022, subd. (a)(1).) The jury returned a verdict of death. This appeal is automatic. (Cal. Const., art. VI, § 11; Pen. Code, § 1239, subd. (b).) We reverse defendant's conviction for conspiracy to murder Dean Noyes and affirm the judgment in all other respects.

I. FACTS

A. Guilt phase

Defendant was originally charged with a codefendant, Lynn Noyes. Before trial, the court severed their cases, and Lynn Noyes pleaded guilty to the murder of Carole Garton and to the conspiracy to murder her husband, Dean Noyes. For clarity, we refer to Carole Garton, Lynn Noyes, and Dean Noyes by their first names. The parties presented the following evidence in Garton's trial.

1. Prosecution evidence

Garton and Lynn met in high school in 1986 and dated for a time. After Lynn was suspended from high school, she saw Garton less, and by 1987, Garton had begun dating Carole. In 1990, Garton entered the Marine Corps, and he and Carole married in 1991. Although Lynn and Garton remained in contact, Lynn began dating Dean, and the two were married in 1992. Lynn and Dean had divorced by the time of Garton's trial in 2001.

a. Conspiracy to kill Dean Noyes

In the beginning of 1996 or 1997, after he and Carole had moved to Shasta County, Garton told his friend Dale Gordon that he was a paid assassin for an organization he called "The Company." He began to talk about murdering Lynn's husband, Dean, as a "hit" or "assassination" for this organization in exchange for money. Over the course of one or two years, Garton and Gordon discussed the murder "about 50 times, at least," and "[m]aybe a hundred times." Garton said he would be paid \$25,000 for such a murder, and although he did not agree to a particular amount, Garton told Gordon that Gordon would be paid from Dean's life insurance policy if he was involved in his murder. Gordon agreed to help plan and participate in Dean's murder.

In the spring of 1997, Garton told Lynn that Dean was having an affair and that “he knew people who could take him out.” Later that year, Lynn received a call from the husband of the woman with whom Dean was having an affair. When she confronted Dean, he acknowledged the affair. Lynn then told Garton to “go ahead and take him out.” She told Garton that Dean would be taking a trip to San Francisco in the future, and she sent Garton a box with keys to the cars that she and Dean owned; keys to their home in Gresham, Oregon; pictures of Dean; and information about where he parked and typically went after work in Portland, Oregon.

Garton began discussing a plan to murder Dean with another friend, Norman Daniels, around October 1997. Garton said there were several “contracts on [Dean’s] head” because he had embezzled money, and Daniels agreed to accompany Garton and Gordon and provide “support” for the plan. Garton told Daniels that he would receive \$1,000 after Lynn received Dean’s life insurance payment if Daniels participated.

Garton originally planned to kill Dean in San Francisco while he was attending a conference, and he discussed this plan with Gordon and Daniels. But the trip was cancelled, and the three never followed through on the plan.

Instead, Garton and Gordon began planning to murder Dean in Oregon at his home or workplace. The two told Daniels that they would travel to Portland in October 1997 “to scout out the area,” and on October 10, 1997, Garton and Gordon rented rooms in a hotel in Portland. That afternoon, they went to the Noyeses’ home in Gresham and walked through the house while she was there. Garton drew a picture of the house, and later Garton and Gordon drove by Dean’s workplace in downtown Portland. That night, Lynn and Garton had sex in Garton’s hotel room.

Gordon and Garton returned to Oregon on January 3, 1998. They stayed in a hotel in the Eugene area, where they met with Lynn. They talked with Lynn about killing Dean and showed her several guns and knives, as well as ammunition, additional magazines, handcuffs, latex gloves, and a first aid kit. Gordon said they did so “to show Lynn that we were really going to do this.” Lynn spent the night in Garton’s room; the two had sex and returned to their respective homes the following day.

In late January or early February 1998, Garton, Gordon, and Daniels met at the Moose Lodge in Anderson, California, to plan a trip to Oregon to murder Dean. They discussed two plans: first, they would try to kill Dean at his workplace; failing that, they would enter the Noyes residence and shoot him there. Garton also discussed paying Gordon and Daniels for their roles in the killing.

On February 6, 1998, the three men drove up to Oregon. They brought a variety of guns, a silencer, communication devices, handcuffs, and latex gloves. Upon arriving in Gresham, they checked into a motel and stashed their equipment in their room. They then drove to the parking garage near Dean’s workplace, where they planned to kill him the next day.

The next morning, Garton, Gordon, and Daniels rose early and drove to the parking garage to await Dean’s arrival. But Dean never arrived; unbeknownst to Garton, Lynn had told Dean to drive the larger of their cars, knowing that this car would not fit into the garage where the three men waited. After realizing that Dean had parked elsewhere, the men left and checked into a different hotel. Later, Garton shot a rifle out the hotel window into a deserted field.

That afternoon, Lynn came to the hotel. She tried to convince Garton to abandon the plan, but he insisted that it was too late to do so and that he would try to kill Dean again that evening. She later called Garton and said she would try to

get Dean and his brother, who was visiting at the time, out of the house so that the killing would not occur in her home.

That night, Garton, Gordon, and Daniels left the hotel and parked near the Noyes residence. The men, all armed, approached the house, and Garton went to the front door. But Garton was unable to open the door, and the men ran back to their car. They returned to their hotel and departed for California the next morning.

After returning home, Garton concocted a new plan to kill Dean. At the time, Lynn thought Dean was embezzling money from his employer. Garton planned to use this information to extort Dean and then kill him. He returned to Gresham in May 1998 and, with Lynn's assistance, staged a break-in of the Noyes residence, taking a planner, a laptop, and some computer disks and equipment. According to Daniels, Garton also planned to kill Dean on this trip if the opportunity arose. Following the staged break-in, Garton called Daniels from his hotel room, telling him to send Dean an anonymous e-mail insinuating that someone knew he was embezzling and threatening harm to his children if he didn't cooperate. Daniels complied. Subsequently, Dean received several cryptic messages from the same anonymous e-mail address. Garton's computer contained evidence that he had accessed the account from which these e-mails were sent. Garton continued to discuss the possibility of murdering Dean with Lynn after sending these e-mails and after Carole's murder, but the conspiracy to murder Dean was never carried out.

b. Murder of Carole Garton and her fetus

In October 1997, Carole and Garton discovered that Carole was pregnant. The prosecution presented evidence that Garton thought children were "pains"

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