Per *Ephraim, supra,* the burden shifted to defendant to prove a personal motive for the shooting. That burden is not met, because the notion that Mora and Ortiz had a personal relationship or a relationship rooted in criminal activity is based upon speculation. In her Report (p. 8), the WCJ points out that Mora had introduced Ortiz to Mr. Wise as Mora's brother, suggesting Mora had a close personal relationship with Ortiz. However, Mr. Wise's trial testimony shows that this introduction occurred on June 1, 2015, the same time that Mr. Wise purchased the business from Mora and assumed its debts, including the $14,000.00 Mora borrowed from Ortiz. However, we take the "brotherly" introduction between the three men as yet another connection to work. Seen as such, Mora's introduction of Ortiz as his "brother" supports a reasonable inference that Mora's death arose out of his employment with Mr. Wise. We find considerable significance in the fact that Mr. Wise, the employer, positively benefitted from the relationship between Mora and Ortiz.[8] This is shown by Mr. Wise's trial testimony that Mora, on Mr. Wise's behalf, would call Ortiz into work as an independent contractor. Mr. Wise also testified that Ortiz would prepare an invoice for his work, and that Ortiz would give the invoice to Mora, who in turn would give it to Mr. Wise for payment. Mr. Wise would then pay the invoice by giving Mora a check addressed to Ortiz, which "was the last time [Mr. Wise] saw that check." (Summary of Evidence, 12/15/20, p. 11:6-13.)[9] In other words, Mora paid Ortiz, on Mr. Wise's behalf, for work done by Ortiz as an independent contractor. Thus it is reasonably clear that in matters concerning Ortiz, Mora acted as a "go-between" for the employer.

Finally, we note that Ms. Perez, Mora's live-in partner, testified that Mora and Ortiz did not have a personal or criminal relationship outside of work. The WCJ did not find this testimony to be credible. But even if the two men had such a relationship, we are not persuaded it outweighs the evidence discussed above, which supports a reasonable inference that Ortiz's shooting of Mora was connected to Mora's employment by Mr. Wise. (Lab. Code, § 3202.5.)

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[8] Although the instant case does not involve the "required vehicle" exception to the going and coming rule, the beneficial work relationship between the three men also supports the conclusion that Mora's death occurred in the course of employment. (See *Zhu v. Workers' Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1031, 1041 (82 Cal.Comp.Cases 692) [vehicle accident during bike transit of caretaker between clients' homes excepted from going and coming rule; caretaker's transit "bestowed a direct benefit" on the employer and therefore was part of the employment relationship].)

[9] As Mr. Wise did not speak Spanish, it also appears he benefitted from Mora serving as Mr. Wise's translator in communicating with Ortiz. (Summary of Evidence, 12/15/20, pp. 9:24-10:5.)

II. MORA'S DEATH OCCURRED IN THE COURSE OF EMPLOYMENT

There is no dispute that Mora was shot to death by Ortiz on a public street, just after Mora had finished work and just after he had exited his employer's parking lot. (Exhibit 11.)[10] Since Mora apparently had begun his commute home from work, the question is whether compensation for his death is barred by the going and coming rule. In general, the rule bars compensation for injuries sustained during an ordinary commute as outside the course of employment; an ordinary commute usually takes place outside the normal hours and location of work. (See *Santa Rosa Junior College v. Workers' Comp. Appeals Bd.* (*Smyth*) (1985) 40 Cal.3d 345 [50 Cal.Comp.Cases 626].)

In determining whether Mora's death occurred within the course of employment, we consider whether the "special risk" exception to the going and coming rule applies under the circumstances of this case. In *Parks v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 585 [48 Cal.Comp.Cases 208] ("*Parks*"), our Supreme Court concluded that the assault of a school teacher in her car, on a public street immediately after she left the school parking lot to go home from work, occurred in the course of employment. According to the Court, there was a special risk to the teacher, not faced by the general public, because her car had been immobilized by departing school children, who had blocked traffic on the public street.

In *Parks*, the Court applied a two-prong test it had developed in an earlier case, *General Ins. Co. v. Workers' Comp. Appeals Bd.* (*Chairez*) (1976) 16 Cal.3d 595 [41 Cal.Comp.Cases 162] ("*Chairez*"). Under the two-prong test of *Chairez* and *Parks*, the special risk exception to the going and coming rule applies (1) if "but for" the employment the employee would not have been at the location where the injury occurred; and (2) if "the risk is distinctive in nature or quantitatively greater than risks common to the public." (*Parks*, 33 Cal.3d at 590, quoting *Chairez* at 16 Cal.3d 595, pp. 600-601.) Further, the overarching principle of liberal construction under Labor Code section 3202 applies to determining whether there is a special risk exception to the going and coming rule, in which case reasonable doubts are resolved in the employee's favor. (*Parks*, 33 Cal.3d at 593.)

[10] Exhibit 11 is a series of three still photos taken from a video that depicts Ortiz and Mora before, during and a little after the shooting. The public street in question, "Bay Street," was the theatre in which the shooting took place. The still photos show that Bay Street is more accurately described as a back alley.

In the instant case, there is no question that the first prong of *Parks* is satisfied because Mora would not have been shot on Bay Street, just after work, but for his employment by Fresh Cuts. Accordingly, the compensability of petitioners' claim for death benefits turns on whether the second prong of *Parks* is satisfied.

In *Parks*, the Court noted that the teacher was regularly subjected at the end of each day's work to the risk of becoming blocked by school children in traffic, and of becoming a "sitting duck" for an assault. According to the Court, this risk to the teacher, though common to the public at large, was occasioned by reason of her employment and was peculiarly and to an abnormal degree thrust upon her; the risk was quantitatively greater than that to which passing motorists might be subjected on a sporadic or occasional basis. (*Parks*, 33 Cal.3d at 592-593, quoting *Freire v. Matson Navigation Co.* (1941) 19 Cal.2d 8, 13 and *Chairez* at 16 Cal.3d at 601, internal quotation marks omitted.) In the same passage of *Parks*, the Court concluded: "Parks' employment required her to pass through the zone of danger each day. As such, her employment created a special risk in leaving the school parking lot. The going and coming rule may not be applied to preclude her from recovering compensation benefits."

In this case, the WCJ states in her Opinion on Decision that Mora was not regularly subjected to any peculiar risk at the end of the day, on a regular basis, like the school teacher in *Parks*. The WCJ notes that Ortiz apparently never argued with Mora or threatened to kill him, hence the WCJ was not persuaded that Mora regularly was subjected to the risk of getting shot by Ortiz due to the nature of Mora's job as a warehouse supervisor.

We do not share the WCJ's view of what it takes to satisfy the second prong of *Parks*. According to the WCJ, *Parks* requires petitioners to produce evidence virtually predicting that Ortiz would shoot Mora just outside the employer's parking lot. We disagree that *Parks* requires such a demanding burden of proof. Rather, we believe that a preponderance of evidence showing Mora was exposed to special risk is sufficient. (Lab. Code, § 3202.5.) In other words, it is enough for petitioners to show that Mora's employment put him at a special risk, not experienced by the public, of being violently confronted by Ortiz just outside the employer's parking lot.

We are persuaded that petitioners have met their burden. Ortiz, who was Mora's co-worker at Fresh Cuts, obviously had a dispute with him, the precise details of which are unknown but likely were connected to work, as previously discussed. Like the teacher in *Parks*, Mora was exposed to the risk, distinctive in nature *or* quantitatively greater than risks common to the public

using Bay Street, because Mora regularly used the employer's parking lot to access that alley. This risk was distinctive in nature or quantitively greater because the lot was used for employee parking, meaning that it was likely Fresh Cuts employees would use the alley with more frequency and regularity than the general public. The risk to Mora also was distinctive in nature or quantitively greater because he was more likely to encounter other Fresh Cuts workers, in close proximity to the Fresh Cuts parking lot, than the general public. In the event of being confronted by a co-worker who had a dispute with him, as happened here, Mora indeed was a sitting duck like the school teacher in *Parks*.

As pointed out by the WCJ, Ortiz backed his van into a parking stall on the public alley adjacent to the gate that separated the alley from the employer's parking lot, so that the driver's side was towards the employer's parking lot. Because Mora backed out of the employer's lot, his driver's side faced Ortiz's driver's side. (Exhibit 11.) Although Mora backed out and briefly got closer to Ortiz's driver's-side door before getting shot a few steps farther away, Ortiz's placement in the alley and his advance towards Mora's driver's-side door can fairly be described as an ambush. It is clear that by reason of Mora's job with Fresh Cuts, Ortiz knew that if he had a score to settle with Mora, he could find and confront him in that alley, right after the work day ended. This risk to Mora was surely distinctive in nature or quantitively greater than the risk to the general public who might use that alley during the day. This satisfies the second prong of *Parks*. We conclude that Mora's shooting death by Ortiz occurred in the course of employment.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order of March 25, 2021 is **RESCINDED**, and the following Findings are **SUBSTITUTED** in its place:

FINDINGS

1. Gabriel Mora, while employed on February 9, 2017 as a warehouse supervisor at Los Angeles, California by Custom Fresh Cuts, whose workers' compensation carrier at the time of injury was The Hartford, sustained injury arising out of and occurring in the course of employment to his digestive and body systems due to gunshots to his abdomen, resulting in his death.
2. The employer had knowledge of the injury to trigger the provision of the notice of potential eligibility to the decedent's dependents, which notice was not provided, thereby tolling the Statute of Limitations and making the claim timely.
3. The claim is not barred by the going and coming rule.
4. The issue of dependency benefits is deferred pending further proceedings and determination by the WCJ, jurisdiction reserved.