

1 to be genuine East Side Dukes graffiti. (8 R.T. 1332, 1337). It appeared to Nichols and
2 Booker that a "kid" could have written it. (7 R.T. 1137, 1160-61; 8 R.T. 1337-38, see
3 also 14 R.T. 2415-16 (statement to detective)). Petitioner showed Booker the .38
4 revolver with the brown handle, and allowed Booker to hold it. (8 R.T. 1332-34).

5 During a party at Petitioner's house a few days before his parents' expected return,
6 Petitioner fired the .38 gun into the air. (7 R.T. 1152-53). That night, Petitioner lent the
7 .38 revolver to Nichols, who gave it back to Petitioner later that night or early the next
8 morning. (7 R.T. 1151-55).

9 **(iv) October 12-13, 1990: The Murders**

10 Arthur and Faye returned to Southern California late at night, October 11, 1990,
11 and spent the night at the McKays' house rather than at home. (9 R.T. 1509). They
12 remained there most of the next day, and a family dinner gathering was held at the
13 McKays' house that evening, October 12, to watch videos of the trip. (9 R.T. 1509-10,
14 1596, 1600, 1635, 1643-44). Petitioner had repeatedly asked Wilder, who lived in a
15 duplex behind the McKays' house, to call as soon as his parents left the McKays' house
16 for home so that he could clean up the house before they arrived. (9 R.T. 1612-14).

17 Petitioner's friend Matthew Nottingham visited Petitioner for one or two hours
18 late in the afternoon of October 12. (7 R.T. 111-11). Petitioner, who was wearing faded
19 blue Levis jeans, was fidgety, and was drinking malt liquor. (7 R.T. 1111-15, 1119).
20 That was the first time Nottingham had seen him drink during the day. (7 R.T. 1115).
21 Petitioner told Nottingham during the visit that if he were ever to go to jail, he would
22 commit a crime serious enough for him to have to go to federal, rather than state, prison.
23 (7 R.T. 1116-17).

24 Nichols and Winston Burt came to Petitioner's house in the early evening for 15
25 to 20 minutes. (7 R.T. 1077-79, 1090, 1162-63, 1216; 8 R.T. 1236). Petitioner was still
26 wearing Levis blue jeans and drinking malt liquor, and had a dark brown gun handle
27 protruding from his pants pocket which he said was his family's gun. (7 R.T. 1079- 84,
28 1087-88, 1092-94, 1164-66).

1 While Nichols and Burt were present, Petitioner called the McKays' house to ask
2 if his parents were there and when they would be coming home. (7 R.T. 1088-89,
3 1163). One of Petitioner's aunts answered and invited him to dinner at the McKays'
4 house, but Petitioner did not want to go and said was planning to go out that night. (7
5 R.T. 1089, 1163-64). He did not ask to speak with his parents. (9 R.T. 1644-45, 1675).
6 According to Nichols' statement to a detective, Petitioner pulled the gun up and down in
7 his pocket while talking on the telephone. (14 R.T. 2416-17). Nichols thought it was
8 the same gun Petitioner had previously shown Nichols on the way back from the beauty
9 shop. (14 R.T. 2417). Petitioner told Nichols and Burt he planned to stay at home that
10 night and wait for his parents. (7 R.T. 1088-89, 1163-64). He told Nichols that he
11 might have an argument with his father over the writing painted on the backyard patio.
12 (8 R.T. 1248-49). Petitioner said that if he had serious trouble with his father he would
13 page Nichols and enter a code number "911" on the pager. (8 R.T. 1249, see also 14
14 R.T. 2419-20 (statement to detective)).

15 Petitioner made a series of calls to the McKays' house that day at 2:03, 6:18, 6:46,
16 and 9:06 p.m. (10 R.T. 1709-11). Petitioner's uncle Duane McKay answered the last
17 call and put Faye on the telephone at Petitioner's request. (9 R.T. 1600-02).

18 Arthur and Faye left the McKays' house in Arthur's truck at 11:20 or 11:25 p.m.
19 (9 R.T. 1510-11, 1673-74). He was a fast driver, and it would normally take him 20 to
20 25 minutes to get home. (9 R.T. 1511-13, 1567, 1602-03, 1674).

21 Bertha Sanchez, who lived two houses from the Statens, was in her open garage
22 doing laundry when she saw the Statens' truck arrive at 11:40 p.m. (6 R.T. 905, 908,
23 910-13, 915-16, 938-40). About 11:50 or 11:55 p.m., while Sanchez and her husband
24 Rafael were watching "Nightline" on television, they heard a noise that sounded like a
25 muffled gunshot or firecracker. (6 R.T. 908, 917-20, 923; 7 R.T. 1026-27). (Mrs.
26 Sanchez did not tell Deputy Edward Andrade that she heard the noise at 12:30 a.m.) (6
27 R.T. 945). The shot sounded very close, possibly right outside the window. (6 R.T.
28 920). Moments later, they heard two more gunshots in rapid succession. (6 R.T. 918-

1 20). The latter shots were clearer, louder, and less muffled. (6 R.T. 919-20, 940-42,
2 945-47, 954-56, 1020-27, 1045, 1060). The Sanchezes looked out the window toward
3 the Statens' house for five to ten minutes but neither saw nor heard any people or
4 vehicular traffic. (6 R.T. 920-22; 7 R.T. 1027-30, 1045-46). They heard no more shots
5 that night. (6 R.T. 929). Petitioner's next door neighbor Craig Hartman also heard one
6 or two gunshots and estimated the time of the shots to be between 11:30 and 11:45. (6
7 R.T. 882-83, 895-96).

8 At 12:04 a.m., Petitioner's aunt Bobbye Williams phoned Petitioner and asked if
9 his parents had arrived. (9 R.T. 1513-16, 1581; 10 R.T. 1699, 1701). He said they had
10 not and that he was getting ready to go out. (9 R.T. 1515-16). He sounded nervous and
11 did not offer to leave a note for his parents. (9 R.T. 1517, 1581-82).

12 Sometime after midnight, Mrs. Sanchez heard the sound of the Statens' truck
13 starting and driving away. (6 R.T. 925-26). About 20 minutes later she heard what
14 sounded like the same truck return and park. (6 R.T. 925-26, 928-29, 942-44, 957).

15 At 12:31 a.m., Williams called Petitioner again and asked if his parents were
16 home. (9 R.T. 1517-18; 10 R.T. 1700). That time, Petitioner said they were home. (9
17 R.T. 1518). He sounded hesitant and never offered to put Faye or Arthur on the line as
18 he normally would whenever Williams called. (9 R.T. 1518, 1584-86).

19 Petitioner made at least 10 calls to Nichols' pager October 12-13, the last two at
20 11:20 p.m. and 12:25 a.m. (7 R.T. 1129, 1216-17; 10 R.T. 1707-09, 1713-14).
21 Petitioner used the code "911" after his phone number on several of those pages, but not
22 on the last few. (8 R.T. 1248-50). Nichols stated to a detective that the last page did
23 bear the "911" code. (14 R.T. 2420). Nichols called Petitioner back one time after
24 midnight and told Petitioner he would not come over and pick him up. (7 R.T. 1717-19;
25 8 R.T. 1248, 1256-58). Petitioner sounded calm. (7 R.T. 1219, 1248, 1257-58).

26 The Sanchezes' son, Eugene, saw no vehicle or pedestrian traffic when he walked
27 home from a friend's house about 12:46 a.m. (6 R.T. 943, 962; 7 R.T. 1063-65,
28 1072-73). Sometime between 12:45 and 1:00 a.m., Christina Cross waited in a car in

1 front of the Sanchezes' house 10 to 15 minutes for her friend, Regina Ontiveros, the
2 Sanchezes' niece. (6 R.T. 957-59, 966-67). Cross saw no vehicle or pedestrian traffic
3 on the cul-de-sac while she waited, nor did she or Ontiveros see any vehicles or
4 pedestrians on the way to or from the Sanchezes' house from Valley Boulevard. (6 R.T.
5 967-75, 978-81; 8 R.T. 998-1004, 1008, 1011-12, 1017, 1067).

6 About 1:05 a.m., Petitioner knocked on the Hartmans' front door and told Michael
7 Hartman that his parents were dead, or that they had been killed or murdered. (7 R.T.
8 829-31). Petitioner was crying or screaming and appeared to be hysterical. (7 R.T.
9 830-31, 848-49, 861-62, 876). Petitioner made coughing noises as if trying to vomit.
10 (7 R.T. 960; 8 R.T. 1047, 1054-55). Michael gave him a paper towel to wipe his mouth,
11 although he did not see Petitioner vomit. (7 RT 849, 855). Michael had Craig, his son,
12 call 911. (7 R.T. 829, 831, 862).

13 Hartman, his son Craig, and Petitioner went into the Statens' house. (7 R.T. 832-
14 33). Turning left after the entryway, Hartman saw Faye's body lying face down. (7
15 R.T. 834, 837, 863). Arthur's body was in the master bedroom. (7 R.T. 835, 837, 863).
16 Neither body had a pulse. (7 R.T. 834-35). The words "ESD Kills" were spray-painted
17 on a mirrored wall in the living room, and both the curtains and sliding glass door
18 leading from the living room to the backyard were completely open. (7 R.T. 863-66,
19 870-71). Everyone left the house quickly and waited outside until the sheriff's deputies
20 arrived. (7 R.T. 837, 871-72). The Hartmans did not touch or move anything in the
21 house. (7 R.T. 837-38, 871-73).

22 Los Angeles County Sheriff's Deputies Gary Lindenmeyer, Dennis Reynolds,
23 Edward Andrade, and Deputy Stone arrived at the Staten residence shortly after 1:00
24 a.m. the next morning. (11 R.T. 1933, 1946; 12 R.T. 2182-83). At that time Petitioner
25 was by the Hartmans' garage. (11 R.T. 1939; 12 R.T. 2191). When the deputies spoke
26 to Petitioner, he appeared to go into a daze and did not respond when a deputy
27 repeatedly asked him his name. (6 R.T. 879-82). Craig felt Petitioner had been
28 "carrying on a little bit too much" and was faking the trance, as Petitioner had been able

1 to converse with the Hartmans before the deputies arrived. (6 R.T. 876, 879-82).

2 The deputies looked through the house to clear it of suspects, secured the house,
3 and waited for homicide detectives. (11 R.T. 1934-38). The bedrooms and computer
4 room were very messy. (11 R.T. 1938, 1946-47, 1957-60; 12 R.T. 2184-85).

5 Paramedics arrived and pronounced Faye and Arthur dead at the scene. (11 R.T. 1938).

6 Deputies took Petitioner, dressed as he was, to the sheriff's station for questioning
7 as a witness but did not arrest him. (11 R.T. 1938-39; 12 R.T. 2191). At no time
8 between the time Petitioner knocked on the Hartmans' door and when sheriff's deputies
9 arrived did Petitioner change clothes. (6 R.T. 839). He had a cut on his right, middle
10 finger with dried blood around it, and his tennis shoes were blood-stained. (9 R.T.
11 1629-30, 1638; 11 R.T. 1943-44, 1950; 12 R.T. 2162-63; 13 R.T. 2202-04).

12 Detectives George Roberts and Joe Seeger arrived just before 3:00 a.m., October
13 13, 1990, walked through the house, and called for criminalists, photographers, and
14 other experts. (12 R.T. R.T. 2187; 13 R.T. 2234-35, 2237-38, 2253-54).

15 (v) *Physical Evidence At The Murder Scene*

16 There were fresh blood drippings in the gated alcove in front of the house, on the
17 inside surface of the front door, on the floor of the entryway just inside the door, and on
18 the carpet at the entrance to the living room. (12 R.T. 2047-53; 13 R.T. 2240-43,
19 2257-60). In the living room, the curtains, sliding glass door, and security gate on that
20 door were open to the backyard, and luggage with baggage tags sat near the open sliding
21 glass door. (11 R.T. 1954; 12 R.T. 2193; 13 R.T. 2244-45, 2338; 14 R.T. 2523). "ESD
22 Kills" was spray-painted on a mirrored wall above the living room couch. (11 R.T.
23 1865). A hand print consisting of fingerprints and part of a palm print was found just
24 below the "E," and the section of the couch just below the hand print had no back
25 cushion. (11 R.T. 1865-67, 1870-78, 1886-87, 1955; 13 R.T. 2243, 2314, 2317-19,
26 2330-31; 14 R.T. 2465-67).

27 In the master bedroom, a fan stood upright, but a pattern of dust suggested it had
28 previously been lying on the floor. (13 R.T. 2249-51; 14 R.T. 2438-39). The light

1 switch at the entrance to the master bedroom was smeared with blood. (12 R.T.
2 2061-62; 13 R.T. 2251-52). Arthur was lying on his back with blood around his head,
3 on the bedspread, and on the carpet beneath him. (13 R.T. 2260-61). Arthur was
4 wearing a pouch belt around his waist. (14 R.T. 2409). The pouch was closed and
5 contained some items. (14 R.T. 2409). A bag containing 97 rounds of .22 caliber
6 bullets was found under the bed. (14 R.T. 2411-12). A file cabinet in the bedroom
7 contained four life insurance policies, and a closet in the same bedroom contained a
8 locked safe. (13 R.T. 2342).

9 In the kitchen, the cabinet and counter around the sink and the dishwasher door
10 contained blood stains. (12 R.T. 2053-57; 13 R.T. 2306-08, 2311-13). Faye's body lay
11 on the floor near the dining room table and an overturned vacuum cleaner. (12 R.T.
12 2193; 13 R.T. 2268-69). There were cuts and blood on her body, and blood under and
13 around her, on the vacuum cleaner, on the walls, and on a nearby china cabinet. (12
14 R.T. 2057-60, 2193; 13 R.T. 2268-69, 2274-77). Faye's purse, containing \$557 in cash,
15 \$200 in traveler's checks, and some Egyptian money, was on the table just above her
16 body. (13 R.T. 2269, 2359-60, 2378). The door to a hallway coat closet near the dining
17 room was ajar, and two cans of spray paint were on a shelf inside. (11 R.T. 1878-80; 13
18 R.T. 2278-80, 2287-88).

19 In a bedroom used as a den or computer room, a book of historic Los Angeles
20 Times headlines titled "Frontpage" lay on the coffee table, open to a page depicting an
21 August 10, 1969 newspaper article regarding the Sharon Tate murder case. (10 R.T.
22 1849, 1852, 1880-83; 13 R.T. 2281, 2285). A piece of notebook paper with handwriting
23 lay atop the opposite page of the open book. (13 R.T. 2284-86; 14 R.T. 2473-74). A
24 large knife was also found on the coffee table. (13 R.T. 2281, 2286-87). A bullet hole
25 and .38 caliber bullet were found in the northwest corner of the hallway near the den. (8
26 R.T. 1418, 1420-21, 1424-25; 13 R.T. 2297-98; 14 R.T. 2484).

27 In the guest bedroom, the bedcovers were flipped over, and hats and several other
28 items lay cluttered on the floor. (13 R.T. 2288-89, 2290-91). A bullet hole went

1 through the interior wall between the north-south hallway and the guest bedroom. (8
2 R.T. 1422-24). Another bullet hole was found on the exterior wall of the guest bedroom
3 opposite the hole in the interior wall, as if a single bullet had passed through both walls.
4 (8 R.T. 1422-24; 13 R.T. 2293-97; 14 R.T. 2487). Sheriff's personnel found a bullet in
5 the exterior wall. (8 R.T. 1419-20, 1425-31).

6 In Petitioner's and Lavelle's bedroom, deputies found a knife in a dresser drawer.
7 (13 R.T. 2348-49). There were blood stains on the hallway floor outside the guest
8 bedroom and Petitioner's bedroom (12 R.T. 2060-61; 13 R.T. 2300-01) but no blood in
9 Petitioner's bathroom or the guest bathroom. (13 R.T. 2304). A door from Petitioner's
10 bathroom to the garage and the outside garage door were closed. (13 R.T. 2305).

11 In the back yard, the letters "ESD" were spray painted on the gravel patio. (13
12 R.T. 2337-38; 14 R.T. 2444). Detective Roberts and others searched for footprints in
13 the backyard and for signs anyone had climbed over the backyard fence and landed in
14 the bushes, but found none. (14 R.T. 2459-61, 2518). Other than the living room
15 sliding glass door and its security gate, all doors and windows were closed and secured,
16 and, though the detectives searched all entrances for signs of forcible entry, they found
17 none. (13 R.T. 2305, 2338-41; 14 R.T. 2444, 2525-26). They found no guns, additional
18 knives, additional bullet holes, or expended bullets, despite a thorough search of the
19 house, garage, backyard and the Statens' vehicles. (13 R.T. 2298-99, 2347-50; 14 R.T.
20 2444-45, 2452-54, 2478, 2488, 2511).

21 Criminalist Victor Wong took swab samples of the blood stains throughout the
22 house. (12 R.T. 2046-62; 13 R.T. 2312). All of the blood stains were bright red and
23 appeared to be recent. (12 R.T. 2063, 2066). A blood stained rag was found inside
24 Arthur's truck. (14 R.T. 2511, 2522).

25 **(vi) *After The Murders***

26 Faye's sisters went to the sheriff's station after one of the sisters heard on the
27 radio about the killings. (9 R.T. 1524-25, 1646-47, 1676). Petitioner was at the station
28 wearing shorts and a short-sleeved shirt (9 R.T. 1525, 1647; 13 R.T. 2344-45) even

1 though the night of October 12-13 had been cold. (7 R.T. 1050, 1054, 1166; 8 R.T.
2 1243; 13 R.T. 2345). Petitioner and either Williams or Gerry went outside the station to
3 smoke. (9 R.T. 1525-26). While both were standing, Petitioner suddenly collapsed and
4 appeared unconscious, and someone called paramedics. (9 R.T. 1526-29, 1579,
5 1586-87, 1677-80). When a paramedic arrived, Petitioner was alert and well oriented,
6 and displayed no physical abnormalities or signs of a seizure. (12 R.T. 2127-31). The
7 paramedic decided Petitioner needed no medical care, and Petitioner declined an offer to
8 be taken to the hospital. (12 R.T. 2132, 2136, 2139, 2141-45).

9 After dropping Petitioner off at the McKays' house, Faye's sisters went to the
10 Staten house and got clothes for him. (9 R.T. 1530-31, 1569-70). Judy and Williams
11 searched his closet, the hall closet, and the washer and dryer in the garage, but found
12 none of Petitioner's Levis blue jeans. (9 R.T. 1532, 1588-89, 1647-50, 1681, 1685,
13 2412). (At some point, the McKays and or detectives found jeans that appeared much
14 too small to fit Petitioner, and which probably belonged to Lavelle. (9 R.T. 1589, 1653;
15 14 R.T. 2513-14). Lavelle was thin, while Petitioner was very large. (9 R.T. 1650-51).)
16 The kitchen, den, and bedrooms were untidy. (9 R.T. 1537). Williams, Judy, and
17 Watts, who saw photographs of the scene, testified that Petitioner's parents would have
18 been very upset to come home and find the house in that condition. (9 R.T. 1537-39,
19 1543-46, 1571-75, 1660-64, 1682, 1686; 10 R.T. 1978-80).

20 The homicide detectives asked Operation Safe Streets (O.S.S.) to examine the
21 graffiti at the house and to investigate whether the killings were gang-related. (10 R.T.
22 1717-22; 14 R.T. 2511, 2520). O.S.S. was a special unit of the Sheriff's Department
23 which monitored street gangs and gang-related activities and maintained confidential
24 intelligence contacts with several gangs including the East Side Dukes. (10 R.T. 1742-
25 46). O.S.S. investigators reviewed police reports, investigated the case, spoke with
26 contacts in the East Side Dukes, and concluded that the murders were not gang-related.
27 (10 R.T. 1785-87, 1800-03, 1820, 1821, 1830, 1838, 1841-42).

28 On October 14, 1990, police officers stopped Nichols while he had the .22 caliber

1 Derringer Petitioner had given him in his pocket. (7 R.T. 1155-57; 8 R.T. 1245-46). He
2 stated the gun belonged to Faye Staten and was arrested for possession of a firearm in
3 violation of his probation, and Detective Roberts questioned him. (7 R.T. 1156-57; 13
4 R.T. 2363-64; 14 R.T. 2501, 2503). Nichols was wearing blood-stained shorts. (8 R.T.
5 1238-39; 13 R.T. 2365; 14 R.T. 2406). After Nichols' arrest, Petitioner told Judy's
6 husband that he was nervous and concerned that the police had caught him in a lie after
7 he had told detectives he had not seen the gun for about a week and the detective found
8 the gun on one of his friends. (9 R.T. 1665-66).

9 After his parents died, Petitioner lived with Judy for a time in the duplex behind
10 his grandparents' house in Los Angeles. (9 R.T. 1630). During that time, Petitioner
11 never wore blue jeans until he bought a new pair about three weeks after the killings. (9
12 R.T. 1630-31, 1653-55, 1673, 1676). Judy returned to the Staten home at least twice to
13 search for Petitioner's jeans. (9 R.T. 1652). She searched the backyard, the attic shaft,
14 and every room, closet, shelf, and drawer in the house, as well as the beauty salon and
15 beauty supply store, and above the acoustic ceiling panels, but she did not find any jeans
16 that would fit Petitioner. (9 R.T. 1651-53).

17 Judy was made the administrator of the parents' estate. (9 R.T. 1668). No will
18 was found. (9 R.T. 1669). According to Judy, the parents' property would pass by law
19 to Petitioner and Lavelle upon the parents' death. (9 R.T. 1669). Petitioner ran the
20 beauty salon after his parents' deaths. (8 R.T. 1377). He was quiet the first few days,
21 but after two or three weeks he was back to his normal "happy go lucky" self, smiling
22 and laughing as if nothing had happened. (8 R.T. 1377-78, 1977).

23 On October 17, 1990 and other dates, Detective Roberts went to the Statens'
24 house and searched the house, the vehicles, and the washer and dryer in the garage for
25 Levis jeans and weapons. (13 R.T. 2350-51; 14 R.T. 2412). He found two cans of
26 spray-paint in the garage, but did not find a weapon or Petitioner's Levis. (13 R.T.
27 2350, 2357-58, 2373; 14 R.T. 2412, 2513-14). On October 24, 1990, Roberts and
28 Detective Seeger searched the beauty salon and beauty supply shop and found a gun

1 cleaning kit in a desk in the beauty supply shop and two cans of spray paint and a roll of
2 duct tape on a shelf in the salon, but no weapons or Levis. (13 R.T. 2350-58).

3 Petitioner's parents' funeral took place October 22, 1990. (9 R.T. 1615).

4 According to Wilder, Petitioner did not appear upset at the funeral. (9 R.T. 1614-15,
5 1636). That night, when Wilder was crying, Petitioner, who was not crying, told her
6 this was no time to cry because they were dead, buried and gone. (9 R.T. 1616).

7 Rather, Petitioner told her it was a time to party and get high. (9 R.T. 1616).

8 On November 1, 1990, Petitioner went to the funeral parlor to sign a claim form
9 on one of Arthur's life insurance policies to pay for funeral expenses. (8 R.T. 1414-15).
10 He did not submit the claim on his own, but had been called by the parlor. (8 R.T. 1398,
11 1414-16).

12 In meetings with Detective Roberts, Nichols, who was concerned he might go to
13 prison for his probation violation, agreed to help the investigation in exchange for
14 Roberts' speaking to the District Attorney about Nichols' case. (7 R.T. 1180; 13 R.T.
15 2371-72, 2421). Nichols told the detective he was a good friend of Petitioner and could
16 find out if Petitioner was involved in his parents' deaths. (13 R.T. 2371-72, 2414, 2421,
17 2503-06, 2516). On November 3, 1990, after Roberts had Nichols released from
18 custody, Nichols met with Petitioner outside the beauty salon while wearing a
19 transmitting wire. (7 R.T. 1179, 1181-82). The transmission was monitored by Roberts
20 and tape-recorded. (7 R.T. 1182, 1188-92, 1198; 13 R.T. 2361-63; 24 R.T. 2506).

21 The tape was played for the jury and admitted into evidence. (7 R.T. 1191; 15
22 R.T. 2600-01, 2614; see also 1 Augmented Clerk's Transcript ("Aug. C.T.") 97-112
23 [Lodged Doc. # A2] (transcript of tape)). In the tape-recorded conversation, Petitioner
24 repeatedly told Nichols he had gotten rid of the .38 caliber revolver before his parents
25 came home and suggested both he and Nichols lie about the gun should the police ask
26 them about it again. (1 Aug. C.T. 99, 100-02; 7 R.T. 1192, 1195-96; 17 R.T. 2845; 18
27 R.T. 2998; 21 R.T. 3431, 3433, 3434-37).

28 Petitioner assured Nichols that the police would not be able to find the gun, and

1 that, as long as Petitioner stuck to his story, they would not have a case. (1 Aug. C.T.
2 104-05; 21 R.T. 3437-40). Petitioner said:

3 They ain't going to find it because I got rid of it. [¶] All we
4 got to do is keep our composure. [¶] I'll stick to my shit.
5 Even when it comes down to the end. I'll be like "No." I'll still
6 say "No." [¶] And it will be like, "Hey, I don't remember a lot
7 of shit."

8 (1 Aug. C.T. 104; 21 R.T. 3439). Petitioner explained:

9 Because they lost. I'm still saying -- but they can't do shit. All
10 they can do is close the motherfucker. [¶] If they still can't
11 find it, I'm still going to blame it on the Dukes.

12 (1 Aug. C.T. 105; 21 R.T. 3440). Petitioner also told Nichols he had hollow point
13 bullets, and that he had intended to tell Nichols to get rid of the .22. (1 Aug. C.T. 106;
14 18 R.T. 3044; 20 R.T. 3327; 21 R.T. 3440-41).

15 One day while Higgins and someone else were at Petitioner's house, Petitioner
16 opened his parents' safe, which contained several stacks of currency. (15 R.T. 2544-45).

17 Detective Roberts test drove a car from the McKays' home in Los Angeles to the
18 Statens' house one night, leaving at 10:55 p.m in light traffic. (14 R.T. 2406-07). The
19 distance was 28.4 miles, and at a maximum speed of 65 miles per hour maintained for
20 about half the distance, the trip took 24 minutes. (14 R.T. 2406-07, 2427-29).

21 Petitioner was arrested on January 8, 1991. (14 R.T. 2411).

22 **(vii) Scientific Evidence And Test Results**

23 An autopsy revealed that Arthur died of a gunshot wound to the head. (11 R.T.
24 1906). The bullet entered the back of Arthur's head horizontally. (11 R.T. 1908).
25 There was no muzzle mark and nothing he could identify as stippling or soot on the
26 wound. (11 R.T. 1908-09). An expended bullet was found in Arthur's head. (11 R.T.
27 1916-18). Other than the bullet wound and some small abrasions on the lower back,
28 which were older, Arthur had no injuries. (11 R.T. 1909-10).

1 An autopsy of Faye's body revealed that Faye died from multiple stab wounds.
2 (11 R.T. 1910). Faye received 18 knife wounds, seven of which would have been
3 independently fatal, including three to the neck and four to the abdomen. (11 R.T.
4 1910-12). There were also non-fatal wounds to the neck, hands, abdomen, and a single
5 wound to the back. (11 R.T. 1912). According to the medical examiner, the hand
6 wounds were consistent with the victim's trying to grab the blade to defend herself. (11
7 R.T. 1913, 1928). Faye also had a blunt force laceration on the back of her head and
8 non-fatal bruises to her extremities. (11 R.T. 1928-29).

9 Sheriff's Department criminalist and serologist Valorie Scherr analyzed blood
10 samples from Petitioner and from the bodies of Arthur and Faye, the blood swatches
11 obtained on October 13 from the crime scene, the blood on Petitioner's tennis shoes, and
12 the blood stains on Nichols' shorts. (11 R.T. 1918-19; 12 R.T. 2154-56, 2162-65; 13
13 R.T. 2346-47; 14 R.T. 2406). Scherr concluded the blood on the shorts could not have
14 been from Petitioner, Arthur, or Faye. (12 R.T. 2167-68). The blood on the swabs
15 Scherr examined from the scene and the blood on the shoes could have come from
16 Petitioner or Faye but could not have come from Arthur. (12 R.T. 2164-67).

17 The parties stipulated that Scherr sent the blood samples to another laboratory for
18 further tests. (12 R.T. 2180-81). Those tests determined that Arthur could not have
19 been the source of any of the samples. (12 R.T. 2180). The blood from the following
20 places could have been Petitioner's but could not have been Faye's: the inside surface of
21 the front door, the entryway floor, the master bedroom light switch, the hallway in front
22 of the guest bedroom and Petitioner's bedroom, the dishwasher door, the floor at the
23 start of the living room carpet, and one of the two blood stains on the kitchen counter.
24 (12 R.T.2180). Conversely, the blood on the dining room walls and the china cabinet
25 could have been Faye's but could not have been Petitioner's. (12 R.T. 2180). No
26 conclusion was possible with respect to the source of the blood in the front alcove or the
27 other of the two stains on the kitchen counter. (12 R.T. 2180-81).

28 Sheriff's Department firearms examiner Dwight Van Horn examined the two

1 bullets found in the walls of the house and the bullet found in Arthur's head. (8 R.T.
2 1443-44). All three were jacketed, hollow point bullets of the same caliber, either .38 or
3 .357, which could have been fired from a .38 special or a .357 magnum revolver
4 manufactured by Smith and Wesson, Tarus, Reuger, or INA. (8 R.T. 1444-45, 1447,
5 1449, 1465). The bullets could have been fired from the same gun. (8 R.T. 1445).
6 However, this could not be determined for certain, due to deformities in each bullet
7 probably caused by passing through a hard substance and due to the unavailability of the
8 murder weapon for test firing. (8 R.T. 1445-48).

9 Tests of the spray paint on the backyard patio and the living room mirrored wall
10 showed both were glossy white krylon paint of the same formula. (10 R.T. 1846-48).
11 Tests of paint from five spray cans, one from the hall closet, two from the garage, and
12 two from the beauty salon, showed that only the can from the closet matched the paint
13 on the patio and living room wall. (8 R.T. 1311-12; 13 R.T. 2356-57).

14 Donald Fandry, a questioned documents examiner for the Sheriff's Department,
15 compared the handwriting style of the "ESD" graffiti on the backyard patio with that of
16 the "ESD Kills" graffiti on the living room wall. (22 R.T. 2019-21, 2030-31). Based on
17 similarities in style, Fandry found a 90 percent probability that the two were produced
18 by the same writer. (22 R.T. 2030-37, 2039, 2041-42).

19 Fingerprint expert Ronald George compared Petitioner's fingerprints to the hand
20 print found on the mirrored living room wall below the first letter of the spray painted
21 graffiti. (11 R.T. 1864-69). The palm and one finger of the hand print on the wall
22 matched Petitioner's. (11 R.T. 1869-72). The other fingers were too smudged to read.
23 (11 R.T. 1872-73, 1876, 1890, 1893). Latent prints expert Dale Falicon determined that
24 a fingerprint found on the open page of the "Frontpage" book on the coffee table in the
25 den was Petitioner's right thumb print. (10 R.T. 1849-53; 13 R.T. 2287).

26 Sheriff's Department experts Victor Wong and Ron George examined the knife
27 found in Petitioner's dresser drawer and found no blood or fingerprints. (14 R.T. 2481-
28 83). The length of the blade was inconsistent with Faye's wounds. (14 R.T. 2519-20).

1 Detective George Roberts concluded the knife found on the coffee table in the den also
2 was not involved in the murders. (13 R.T. 2286-87).

3 **(viii) *The East Side Dukes Gang***

4 A Hispanic street gang known as the East Side Dukes claimed territory to the
5 north and west of the street where Petitioner lived, including the row of houses behind
6 Petitioner's and the Hartmans' houses. (6 R.T. 844-45, 874, 893-94; 7 R.T. 1070-71,
7 1213; 8 R.T. 1331-32; 11 R.T. 1955). Their graffiti was often seen in the neighborhood.
8 (6 R.T. 874-75; 8 R.T. 1338). However, as of October 12, 1990, the East Side Dukes
9 did not claim Petitioner's block. (6 R.T. 948-49; 8 R.T. 1348; 10 R.T. 1734-35).
10 Gunshots could be heard in the distance from other blocks on a weekly basis, but they
11 were not common on Petitioner's block. (6 R.T. 843-44, 882-83, 941-42, 948; 7 R.T.
12 1058-60, 1071; 8 R.T. 1240-41). Burt, Nottingham, and Booker, who lived in
13 Petitioner's neighborhood, said there was no problem with the East Side Dukes at the
14 time of the killings. (7 R.T. 1091, 1116; 8 R.T. 1343).

15 The East Side Dukes had threatened African Americans (Petitioner and Nichols
16 were African American), and graffiti stating "ESD kills niggers" had appeared near
17 Petitioner's neighborhood. (6 R.T. 901-02; 7 R.T. 1213; 10 R.T. 1758). On one
18 occasion, the home of an African American family living in the heart of East Side
19 Dukes territory was "shot up." (8 R.T. R.T. 1344-46). East Side Dukes members would
20 stare hard at Nichols and other African Americans on the street. (8 R.T. R.T. 1233,
21 1251-52). However, Craig Hartman knew of at least one African American member of
22 the East Side Dukes. (6 R.T. 902). Members of the East Side Dukes once pointed a gun
23 at Nichols in 1989 and threatened Nichols and Petitioner once in early 1990. (7 R.T.
24 1138-41; 8 R.T. 1233). Nichols also was threatened by the East Side Dukes twice in the
25 two months prior to the murders. (8 R.T. 1243-45).

26 After the killings, Booker asked his acquaintances in the East Side Dukes about
27 the crimes. (8 R.T. 1335). They responded they would not have committed such a
28 crime. (8 R.T. 1335, 1342-43, 1346).

1 Sergeant David Watkins of O.S.S., who had experience with the East Side Dukes,
2 testified as a gang expert. (10 R.T. 1717). According to Watkins, the graffiti found in
3 the Statens' living room and backyard did not appear to be genuine East Side Dukes
4 graffiti as it was not written in the distinct, blocked writing style of that and other
5 Hispanic gangs. (10 R.T. 1747-48, 1779-80 1753-55, 1797-1800, 1808, see also 8 R.T.
6 1337-38 (Brandon Booker's testimony)). The graffiti at the Staten residence likewise
7 did not appear to Craig Hartman to be like any East Side Dukes graffiti he had seen
8 before. (6 R.T. 871- 72, 876, 884-85, 888, 896-98). At trial, Craig, Booker, and
9 Watkins drew examples of typical East Side Dukes writing. (6 RT 884-85; 8 R.T.
10 1338-39; 10 R.T. 1759 (referring to prosecution Exhibit 11)). Photographs of examples
11 of East Side Dukes' graffiti in Petitioner's neighborhood were presented at trial. (10
12 R.T. 1749-53, 1755-59, 1765-69, 1794, 1800; 14 R.T. 2408-09).

13 Moreover, according to Sheriff's sergeant and prosecution witness David
14 Watkins, it would be unusual for such graffiti to be hidden in a backyard or inside,
15 rather than displayed on the front of, a house or garage. (10 R.T. 1733-34, 1779-82).
16 The purpose of the graffiti is to claim territory and to threaten and intimidate others. (10
17 R.T. 1730-31). The East Side Dukes are very brazen about announcing their presence
18 and their intent to kill someone to the whole neighborhood with graffiti. (10 R.T. 1730-
19 33). True gang graffiti usually included the gang member's street name and identified
20 the intended victims. (10 R.T. 1728-29, 1765-69, 1771, 1780-82, 1816). Watkins also
21 opined that the style of the crime in this case was not typical of the East Side Dukes.
22 (10 R.T. 1785-90). The Dukes are territorial and would threaten rival gang members in
23 their neighborhood, but they normally would not threaten or intentionally harm others,
24 including African Americans, who lived in or passed through the neighborhood. (10
25 R.T. 1769-70). Killings of innocent bystanders by such gangs are usually accidental.
26 (10 R.T. 1724-25, 1769-70, 1772, 1793-94). If the Dukes wanted to kill someone, they
27 would do a drive-by shooting or knock on the victim's door and call him outside. (10
28 R.T. 1773-74, 1777, 1788-89). Watkins knew of no case when the East Side Dukes

1 broke into a house at night to rob its occupants. (10 R.T. 1741, 1788).

2 **(ix) Trial Events**

3 At some point before trial and at trial, Bertha and Rafael Sanchez viewed a
4 videotape of the "Nightline" program which aired on October 12, 1990, and each
5 identified the moment, toward the end of a commercial break, when they heard shots. (6
6 R.T. 923-24, 930-33; 7 R.T. 1031-36). A sales manager from the television station
7 testified the show aired from 11:30 to 11:59 p.m., and local commercial breaks occurred
8 at 11:37 to 11:38, 11:47 to 11:48, and 11:57 to 11:58. (9 R.T. 1488-90).

9 Witnesses Burt, Nichols, Burden, Booker, Van Horn, and Clifton McKay were
10 shown Detective Seeger's Smith and Wesson Model 36, .38 caliber revolver at trial and
11 stated it looked very similar to the .38 caliber revolver with the brown handle they
12 referred to in their testimony. (7 R.T. 1084, 1148-49; 8 R.T. 1273, 1332-34). An
13 employee of the store where Faye bought her Smith and Wesson revolver also identified
14 Seeger's gun at trial as being of the same type as the gun Faye purchased. (8 R.T. 1357,
15 1359-61).

16 The tape of Nichols' recorded conversation with Petitioner was played to the jury.
17 (7 R.T. 1188-91; *see also* 1 Aug. C.T. 98-112 (transcript of tape)). Nichols and Roberts
18 authenticated it as complete and accurate. (7 R.T. 1182-83, 1188-92).

19 Bobbye Williams viewed photographs of various rooms of the house the Sheriff's
20 Department took before the deputies and detectives had touched or moved anything. (9
21 R.T. 1542-45). Those photographs showed the rooms in the same condition as she saw
22 them. (9 R.T. 1542-45; *see* 11 R.T. 1880-81 ((testimony of Officer Ronald George); 13
23 R.T. 2255 (testimony of Detective George Roberts), 2281-82, 2290-91, 2302-03
24 (same)).

25 **(b) Petitioner's Guilt Phase Defense**

26 **(i) Events Before And After The Murders**

27 On July 4, 1990, Arthur told Petitioner, "When I get back, you're moving out."
28 (16 R.T. 2725). Arthur then told Petitioner's paternal grandmother, Korea Staten, "I'm

1 putting him out, Momma." (16 R.T. 2725). Korea told a defense investigator Arthur
2 had put Petitioner out of the house once before but had taken him back. (16 R.T. 2724-
3 25). However, Korea testified Petitioner had not actually been put out, but had simply
4 moved out. (16 R.T. 2724).

5 Petitioner sometimes drove Arthur's black truck. (16 R.T. 2728, 2738, 2751-52;
6 17 R.T. 2778-79, 2789-90, 2811-12).

7 When Los Angeles County Sheriff's Deputy Edward Andrade arrived at the
8 murder scene early the morning of October 13, 1990, Petitioner was leaning against a
9 neighbor's garage, rocking back and forth, cupping his face in his hands. (15 R.T. 2615-
10 18, 2632). Andrade tried to speak with Petitioner and got a few details from him. (15
11 R.T. 2619). At 3:30 a.m., Andrade spoke with Bertha Sanchez, who said she heard
12 firecracker noises after 12:30 a.m. while she was doing laundry in the garage. (15 R.T.
13 2624-28, 2631-32). When Andrade spoke with the Hartmans that morning, neither of
14 them mentioned they had heard shots. (15 R.T. 2634). Detective Roberts told Andrade,
15 who was still training, what to include in his report. (15 R.T. 2616-17, 2633).

16 On the morning of October 13, 1990 at the murder scene, Detective Roberts told
17 coroner's investigator Claudine Ratliffe, in response to a standard question by Ratliffe
18 for her report, that a possible suspect was in custody. (16 R.T. 2582).

19 Sheriff's Department personnel tested Petitioner's hands for gunshot residue on
20 October 13, 1990, and found none. (16 R.T. 2665-67). However, these results did not
21 foreclose the possibility Petitioner had recently used a firearm. (16 R.T. 2668-72).

22 **(ii) *Petitioner's Character and Relationship With His***
23 ***Parents***

24 About five years before trial, Petitioner worked for a few months as a security
25 guard at a radio station. (16 R.T. 2654). Two and a half years before trial, Petitioner
26 worked for Rick Huth doing mechanical work, cleaning up, running errands, picking up
27 Huth's kids, and making bank deposits. (15 R.T. 2585). Huth found Petitioner
28 trustworthy and had no problems with him. (15 R.T. 2585). Occasionally, Petitioner

1 would help his mother at the beauty salon and supply shop. (16 R.T. 2656-57; 17 R.T.
2 2778, 2791-92, 2810-11).

3 Petitioner was kind, understanding, respectful, and non-aggressive, and had a
4 good, loving relationship with his parents. (16 R.T. 2654-56, 2715, 2717, 2726-27,
5 2737; 17 R.T. 2777, 2784-86, 2789, 2810, 2815). According to Korea Statens, the
6 Statens were "a very close-knit family," and Petitioner had no problems with his father.
7 (16 R.T. 2714, 2717, 2723). According to Petitioner's friend Brian Ellis, Arthur was
8 sometimes hard on Petitioner but Arthur and Petitioner never had arguments. (17 R.T.
9 2789, 2800-01). Petitioner was supportive of schoolmates and steered them away from
10 the East Side Dukes. (16 R.T. 2735, 2737). Petitioner took care of his younger brother,
11 Lavelle, who was "slow." (16 R.T. 2760-61).

12 Petitioner was in a rap music group formed in the summer of 1990 and managed
13 by neighbor Robert Oseguera called "the First Amendment." (16 R.T. 2716-17,
14 2732-34). Petitioner's parents supported Petitioner's participation in the group, and
15 Arthur offered to back Petitioner financially. (16 R.T. 2716-17, 2739, 2743-46,
16 2756-58). The handwriting on the notebook paper found on the "Frontpage" headlines
17 book on the night of the murders appeared to be rap music lyrics. (16 R.T. 2744).

18 (iii) *The East Side Dukes Gang*

19 The East Side Dukes gang claimed Petitioner's neighborhood as their "turf." (16
20 R.T. 2753). Confrontations between African Americans and Hispanics, and
21 gang-related fights, have occurred in the neighborhood. (17 R.T. 2802). The East Side
22 Dukes used the initials "ESD" in graffiti. (16 R.T. 2679-80). The vice principal at
23 Petitioner's high school has seen graffiti with "ESD" written in the same style as found
24 on the Statens' living room wall, but such graffiti normally would include someone's
25 "placa" or street nickname. (16 R.T. 2683-84). East Side Dukes graffiti could be seen
26 throughout the neighborhood. (16 R.T. 2736).

27 One night, while Petitioner, Nichols and others stood on a corner, a car load of
28 Hispanics drove by, threw a beer bottle, and yelled "Dukettes," or "East Side Dukettes."

1 (17 R.T. 2790-91, 2802-03). Another time, less than a year before the murders,
2 Petitioner, Nichols, and Quincy Murphy were in front of Nichols' house when someone
3 pulled up in a car and said, "This is East Side Dukes territory." (17 R.T. 2816-18). The
4 person in the car told Petitioner, "I know where you stay. I'm going to get you, fat boy,"
5 and left. (17 R.T. 2818).

6 **(iv) *Petitioner's Testimony***

7 Petitioner took the stand in his own defense. (17 R.T. 2823). Petitioner testified
8 he had a good relationship with both of his parents, although in the last year before their
9 deaths he was not as close with his father as he had been. (17 R.T. 2825-26). Arthur
10 was strict and expected much from Petitioner. (17 R.T. 2826-27). Arthur was proud,
11 however, of Petitioner's work with the rap music group and liked to play the group's
12 "demo" tape at the beauty shop. (17 R.T. 2857-59). Petitioner had problems with his
13 father, but Arthur never told Petitioner to move out of the house. (17 R.T. 2874).
14 However, one time, Petitioner moved out on his own to a rented house around the
15 corner. (17 R.T. 2874).

16 In April or May, 1990, Petitioner had a conversation with Nichols in front of
17 Higgins' house in which Nichols, a drug dealer, asked Petitioner for advice about
18 managing his money. (17 R.T. 2827-28, 2875-78). Petitioner told Nichols what his
19 father had told him regarding investments in stocks, independent retirement accounts,
20 and life insurance policies. (17 R.T. 2828, 2852-53, 2877-80). There was no discussion
21 about doing something to Petitioner's parents for money. (17 R.T. 2827-28).

22 Members of the East Side Dukes threatened Petitioner often after the Statens
23 moved to the neighborhood. (17 R.T. 2829-30, 2937-38; 18 R.T. 3025). In May or
24 June, 1990, while Petitioner, Nichols and Murphy were in front of Nichols' house, a car
25 pulled up and the driver yelled, "This is East Side Dukes territory." (17 R.T. 2830-31).
26 A verbal altercation ensued, and the driver told Petitioner, "Yeah, you fat boy, I know
27 you and I know where you live. I get you. I get with you later." (17 R.T. 2831). Later
28 that night someone fired a gun at Petitioner and yelled "Dukes." (17 R.T. 2830-31,

1 2836-37, 2943-45). The East Side Dukes shot at Petitioner two other times since
2 summer, 1989. (17 R.T. 2938-43, 2945-46). Petitioner sometimes carried Faye's .22
3 caliber gun for protection. (17 R.T. 2892; 18 R.T. 2987-88). Faye kept the gun under
4 her bed and sometimes carried it in her purse. (17 R.T. 2891-92; 18 R.T. 2987-88).

5 Shortly before Petitioner's parents left on vacation, Petitioner gave Nichols his
6 pager. (18 R.T. 2958). After receiving threatening telephone calls from the East Side
7 Dukes during the vacation, Petitioner gave his mother's .22 caliber gun to Nichols for
8 protection. (17 R.T. 2837-38, 2873-74, 2891, 2921; 18 R.T. 2958). The next day, four
9 or five days after Arthur and Faye left, Nichols drove Petitioner to the beauty supply
10 shop. (17 R.T. 2840-41, 2889). Petitioner took the .38 revolver home from the shop for
11 protection from the East Side Dukes. (17 R.T. 2840-41, 2889-91, 2920).

12 One night during the vacation, while Nichols and Burden were at Petitioner's
13 house, Petitioner heard someone go past the side of the house toward the backyard. (17
14 R.T. 2841-44, 2899-2905, 2925-26; 18 R.T. 3005, 3053). He took the .38 and walked
15 around the side of the house to the backyard but saw no one. (17 R.T. 2841-44,
16 2899-13, 2925-26; 18 R.T. 3005-06, 3053). Petitioner did not ask Burden about how to
17 fashion a silencer. (17 R.T. 2019). Burden said something about a silencer on his way
18 out, but the remark was not directed to Petitioner. (17 R.T. 2918-20; 18 R.T. 3053-54).

19 The next day, Petitioner saw the "ESD" graffiti in his backyard. (17 R.T. 2838,
20 2844, 2928-30). Petitioner testified he already knew about the graffiti before the
21 previous night. (18 R.T. 3004-05). He showed it to Nichols and Booker. (17 R.T. 2839,
22 2930-32). When Booker asked what Petitioner would do about it, Petitioner displayed
23 the .38 gun and said "This is what I'm going to do about it if I catch them." (17 R.T.
24 2933).

25 Petitioner held a "get together" at his house on a subsequent night during his
26 parents' vacation. (17 R.T. 2844-45). Several friends of Nichols' whom Petitioner did
27 not trust were at the party. (17 R.T. 2996-97). Petitioner lent the .38 revolver to
28 Nichols at the party, and when Nichols returned it later that night, Petitioner put it under

1 the living room couch. (17 R.T. 2894, 2898-99, 2923-28; 18 R.T. 3010-14). The next
2 day, Petitioner noticed the gun was missing. (17 R.T. 2845, 2921-24; 18 R.T. 3010).
3 Petitioner never told Nichols or anyone else that the gun was lost because he suspected
4 that Nichols' friends had stolen it. (17 R.T. 2928; 18 R.T. 2995-96). For the same
5 reason, Petitioner lied to Nichols during the tape-recorded conversation when Petitioner
6 claimed to have gotten rid of the gun. (17 R.T. 2845; 18 R.T. 2997-98). Petitioner did
7 not have the gun on October 12, 1990. (17 R.T. 2887).

8 On October 12, 1990, Petitioner cleaned the house and did gardening in the front
9 yard. (17 R.T. 2846, 2861; 18 R.T. 2959). Between 3:00 and 5:00 p.m., he accidentally
10 cut a finger on his right hand with an electric hedge trimmer. (17 R.T. 2846-47; 18 R.T.
11 2968-72). He went inside through the front door, looked in the master bathroom, the
12 kitchen, and his own bathroom for gauze to dress the cut, finally finding some in the
13 guest bathroom. (18 R.T. 2972-79, 3040). He later washed the cut in the kitchen sink
14 and changed the gauze. (18 R.T. 3040-42.)

15 On the night of October 12, 1990, Petitioner was working on lyrics to a rap song,
16 and looked through the historic headlines book in the den for an article on Martin Luther
17 King to use in the song. (17 R.T. 2859-60; 18 R.T. 2963-65). The notebook paper
18 found in that book contained the lyrics Petitioner was writing. (18 R.T. 2963-65, 3018).
19 Petitioner paged Nichols many times that night to have Nichols pick him up. (17 R.T.
20 2853-54; 18 R.T. 3036-37, 3051-52). When Petitioner's aunt, Williams, called after
21 12:00 a.m., his parents were not yet home. (17 R.T. 2854; 18 R.T. 3021-22). Petitioner
22 wore shorts and a tee shirt that night. (17 R.T. 2846). His three pairs of blue jeans were
23 in his bedroom or in the laundry in the garage. (17 R.T. 2863-64).

24 Arthur and Faye arrived at home about 12:05 or 12:10 a.m. (17 R.T. 2864).
25 Petitioner greeted them, helped carry in the luggage, and talked with them awhile. (17
26 RT 2864- 66; 18 R.T. 3017-20). When Petitioner's aunt Bobbye Williams called back
27 about 12:30 a.m., Faye gestured to Petitioner that she did not want to talk to Williams.
28 (17 R.T. 2854-55). Thus, Petitioner was hesitant on the telephone with Williams. (17

1 R.T. 2854-55, 3022.)

2 Arthur allowed Petitioner to take the truck to go to a nearby hamburger place, as
3 the Cadillac was not running. (17 R.T. 2865-66). Petitioner left at 12:30 or 12:45 a.m.
4 (17 R.T. 2866). When he left, the living room curtains and sliding glass door were open
5 but the knob and deadbolt to the security gate were both locked. (17 R.T. 2866). All
6 other doors and windows were closed. (18 R.T. 3022-23). Just before Petitioner would
7 have reached the hamburger place, he recalled he did not have his money and returned
8 home. (18 R.T. 3024-26). He was gone 15 to 20 minutes. (17 R.T. 2872).

9 On his return at 12:55 or 1:00 a.m., Petitioner found his mother's body in the
10 dining room. (17 R.T. 2867). He shook her, then ran to his bedroom while calling out
11 for his father. (17 R.T. 2867-68; 18 R.T. 3028-30, 3032). Hearing no reply, he ran
12 through the kitchen and the living room. (17 R.T. 2868). Seeing the open sliding glass
13 door and security gate in the living room, Petitioner briefly stepped out into the
14 backyard. (17 R.T. 2868; 18 R.T. 3031- 32). He came back inside, saw the "ESD Kills"
15 graffiti on the living room wall, and went into the master bedroom looking for his
16 father. (17 R.T. 2868, 2872; 18 R.T. 3032). The light was off. (17 R.T. 2869).
17 Petitioner turned on the light with his cut right hand and found his father's body in the
18 bedroom, then ran outside to the Hartmans' house. (17 R.T. 2868-70; 18 R.T. 3032-33).
19 He denied having shot his father or stabbed his mother and claimed he was not at home
20 at the time of their death. (17 R.T. 2871-72).

21 Petitioner was not alert when Detective Roberts interviewed him on October 13,
22 because he had not slept since the previous morning and did not want to answer Roberts'
23 questions because of Roberts' pushy attitude. (17 R.T. 2949-52; 18 R.T. 2984-85,
24 2989-90). He gave Roberts incorrect information about the last time he had seen the .22
25 Derringer but did so unintentionally. (18 R.T. 2983-85). Roberts had asked him about
26 the .22 because of the ammunition found under Arthur's and Faye's bed. (18 R.T.
27 2991-94). While standing outside the station with his aunts, Petitioner blacked out and
28 woke up on the ground, lightheaded and dizzy. (17 R.T. 2848-51).

1 Sometime after the killings, Petitioner's aunt Patty and aunt Judy asked him to
2 reopen the beauty supply shop to help pay the bills, and that he search the house for
3 legal paperwork. (17 R.T. 2856, 2886). Accordingly, Petitioner opened his parents'
4 safe and found less than \$300.00 in cash inside. (17 R.T. 2855-57, 2884-86). At his
5 aunts' request, Petitioner signed the life insurance claim to pay funeral expenses but
6 made no other claims on his parents' life insurance policies. (18 R.T. 2998-3003).

7 Petitioner testified that the .38 revolver shown to various witnesses at trial looked
8 very much like his mother's gun. (17 R.T. 2887-88.)

9 **(c) *The Prosecution's Guilt Phase Rebuttal Case***

10 In rebuttal, the prosecutor presented the jury with a stipulation that an investigator
11 had interviewed Korea Staten. (18 R.T. 3057). According to the stipulation, Korea
12 Staten told the investigator that Arthur pushed education and responsibility too much,
13 creating friction between himself and Petitioner. (18 R.T. 3057-58). She told the
14 investigator that Arthur had once put Petitioner out of the house but later took him back.
15 (18 R.T. 3058).

16 Detective Roberts testified that, on October 13, 1990, he searched the trash cans
17 and waste baskets in the kitchen, guest bathroom, and alongside the house, and found no
18 gauze, gauze wrappers, or bloodied items. (18 R.T. 3060-64, 3100-02, 3122-23). At the
19 time he interviewed Petitioner that day, Roberts did not suspect him of the murders. (18
20 R.T. 3069). Petitioner was calm, answered questions in a straightforward fashion,
21 provided many names and details, and did not seem to have any difficulty recalling
22 things. (18 R.T. 3070-72). At the time of the interview, Roberts did not yet know about
23 the .22 ammunition under the victims' bed. (18 R.T. 3073-74). Petitioner discussed the
24 .22 handgun in response to general questions regarding any weapons the family owned.
25 (18 R.T. 3072-73). The .22 ammunition was later found under the bed based on
26 information Petitioner provided. (18 R.T. 3074-76). Petitioner never mentioned the .38
27 caliber revolver to Roberts. (18 R.T. 3077, 3121).

28 When Detective Roberts questioned Petitioner about problems with the East Side

1 Dukes, Petitioner told him only that he had received threatening telephone calls during
2 his parents' vacation. (18 R.T. 3078-79). Petitioner never mentioned that they had shot
3 at him three times or that they had threatened him for years. (18 R.T. 3080, 3118-19).
4 Detective Roberts drove the 2.7 miles from the Statens' house to the hamburger place
5 identified in Petitioner's testimony. (18 R.T. 3082). In light traffic with three red lights,
6 it took Roberts five minutes. (18 R.T. 3082-83, 3107).

7 **2. The Penalty Phase**

8 **(a) *The Prosecution's Penalty Phase Case In Aggravation***

9 Relying on the circumstances of the crime as an aggravating factor (see 23 R.T.
10 3791, 3794-96), the prosecutor proffered autopsy photographs of Faye's wounds. (23
11 R.T. 3645-48, 3781). The parties stipulated that Petitioner was 24 years old when the
12 killings occurred. (23 R.T. 3781).

13 **(b) *The Defense's Penalty Phase Case in Mitigation***

14 Petitioner was intelligent. (23 R.T. 3664, 3675, 3683, 3701-02, 3756-57). He
15 graduated high school and attended Rio Hondo Community College for two years. (23
16 R.T. 3679, 3679-80, 3683, 3696-97, 3701). He studied Criminal Investigation and took
17 the examination to become a sheriff's deputy but was told he would have to lose weight.
18 (23 R.T. 3675, 3715). He also studied cosmetology and mechanical work. (23 R.T.
19 3683, 3715). Petitioner's friend Brian Ellis never saw Petitioner take drugs. (23 R.T.
20 3699). Petitioner wrote rap songs for his music group. (23 R.T. 3679, 3704, 3712-13).
21 The songs Petitioner wrote often had positive anti-gang, anti-drug, or religious
22 messages. (23 R.T. 3715). Three weeks before Petitioner's parents' vacation, Arthur
23 said he was very proud of Petitioner's music. (23 R.T. 3679).

24 Petitioner occasionally went to church with Korea and other family members and
25 read the Bible with Korea. (23 R.T. 3690). Bishop Matthew Richardson approached
26 Petitioner about joining the church and Petitioner expressed some interest. (23 R.T.
27 3691). Bishop Richardson and Korea frequently sent Petitioner church and scripture
28 materials while he was in custody in this case. (23 R.T. 3659-60, 3690-92.)

1 *Garceau*, 538 U.S. 202, 207 (2003).

2 Under AEDPA, a federal court may not grant habeas relief “with respect to any
3 claim that was adjudicated on the merits in State court proceedings” unless the
4 petitioner shows that the state court’s adjudication “resulted in a decision that was
5 contrary to, or involved an unreasonable application of, clearly established Federal law,
6 as determined by the Supreme Court of the United States,” or that the state court’s
7 adjudication of a claim “resulted in a decision that was based on an unreasonable
8 determination of the facts in light of the evidence presented in the State court
9 proceeding.” 28 U.S.C. § 2254(d)(1); *Williams v. Taylor*, 529 U.S. 362, 402-13 (2000).
10 A state court’s decision is “contrary to” clearly established federal law if (1) the state
11 court “applies a rule that contradicts the governing law” announced in Supreme Court
12 cases, or (2) the state court decides a case differently than the Supreme Court did on a
13 set of materially indistinguishable facts. *Mitchell v. Esparza*, 540 U.S. 12, 15-16 (2003)
14 (internal quotation marks omitted). A state court’s application of clearly established
15 federal law is “unreasonable” when the state court identifies the correct governing legal
16 principle from Supreme Court precedent but applies it to the case in an objectively
17 unreasonable manner. *Wiggins v. Smith*, 539 U.S. 510, 520 (2003).

18 Habeas relief may also issue if the state court’s adjudication of a claim “resulted
19 in a decision that was based on an unreasonable determination of the facts in light of the
20 evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d)(2). A state
21 court’s factual findings are “presumed to be correct” unless the habeas petitioner rebuts
22 the presumption through “clear and convincing evidence.” 28 U.S.C. § 2254(e)(1).

23 In reviewing the reasonableness of the state court’s determination, this Court is
24 limited to the evidence that was presented in state court. 28 U.S.C. § 2254(d)(2) (a
25 federal habeas court must review the reasonableness of a state court’s factual
26 determinations “in light of the evidence presented in the State court proceeding.”);
27 *Cullen v. Pinholster*, ___ U.S. at ___, 131 S. Ct. at 1398 (imposing the same rule under
28 Section 2254(d)(1)).

1 As the United States Supreme Court recently reminded the lower courts, this
2 Court may not grant relief in an AEDPA case just because it would come to a different
3 conclusion than the state court has regarding a particular prisoner's claim. *See*
4 *Harrington v. Richter*, __ U.S. __, __, 131 S. Ct. 770, 785-86 (2011). Instead “[a] state
5 court's determination that a claim lacks merit precludes federal habeas relief so long as
6 ‘fairminded jurists could disagree’ on the correctness of the state court's decision.” *Id.*,
7 at 786 (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)).

8 Where a state court adjudicates the merits of an issue without explaining its
9 reasoning, as it did here in the case of Petitioner's state habeas petitions, Section
10 2254(d) still applies. *Cullen v. Pinholster*, *supra*, __ U.S. at __, 131 S. Ct. at 1402.

11 In these circumstances, [petitioner] can satisfy the ‘unreasonable
12 application’ prong of § 2254(d)(1) only by showing that ‘there was no
13 reasonable basis’ for the California Supreme Court's decision. ‘[A] habeas
14 court must determine what arguments or theories ... could have supporte[d]
15 the state court's decision; and then it must ask whether it is possible
16 fairminded jurists could disagree that those arguments or theories are
17 inconsistent with the holding in a prior decision of this Court.’

18 *Id.*, __ U.S. at __, 131 S. Ct. at 1402 (internal citations omitted). This is a “high
19 threshold.” *Id.*, __ U.S. at __, 131 S. Ct. at 1403. When it is clear that the state court
20 has not decided an issue, the federal court reviews that question *de novo*. *Rompilla v.*
21 *Beard*, 545 U.S. 374, 377 (2005).

22 Petitioner has the burden of demonstrating that his claims survive review under
23 Section 2254(d). *See Harrington v. Richter*, __ U.S. __, __, 131 S. Ct. 770, 784 (2011)
24 (“Where a state court's decision is unaccompanied by an explanation, *the habeas*
25 *petitioner's burden* still must be met by showing there was no reasonable basis for the
26 state court to deny relief.”) (emphasis added); *see also Robertson v. Cain*, 324 F.3d 297,
27 302 (5th Cir. 2003) (“under § 2254(d)(1), Robertson should be entitled to federal habeas
28 relief *if he can show* that the state court adjudication of his claim was either ‘contrary to’

1 clearly established federal law ‘ or’ an ‘unreasonable application’ of clearly established
2 federal law, as determined by the United States Supreme Court.”) (emphasis in original
3 deleted; emphasis added); *McKenzie v. McCormick*, 27 F.3d 1415, 1418 (9th Cir. 1994)
4 (a habeas petitioner has the burden of proving that his claims have merit), *cert. denied*
5 *sub nom. McKenzie v. Weer*, 513 U.S. 1118 (1995); *but cf. O’Neal v. McAninch*, 513
6 U.S. 432, 436 (1995) (Deciding if a Constitutional error is harmless “does not involve a
7 judge who shifts a ‘burden’ to help control the presentation of evidence at a trial, but
8 rather involves a judge who applies a legal standard . . . to a record that the presentation
9 of evidence is no longer likely to affect.”).

10 Finally, if petitioner’s claims plainly do not survive review under Section
11 2254(d), then the Court may address that question, avoiding the need to address
12 Respondent’s procedural default defense and potentially complex issues associated with
13 that defense. *Franklin v. Johnson*, 290 F.3d 1223, 1232 (9th Cir. 2002) (*citing Lambrich*
14 *v. Singletary*, 520 U.S. 518, 525 (1997) (“We do not mean to suggest that the
15 procedural-bar issue must invariably be resolved first; only that it ordinarily should be.
16 It is wasteful of both our resources and that of the litigants to remand to the district court
17 a case in which that court improperly found a procedural bar, if the ultimate dismissal of
18 the petition is a foregone conclusion.”)). Because that is the case with respect to the
19 claims the Court is denying here, on those claims, the Court turns directly to the Section
20 2254(d) issue and declines to rule on Respondent’s procedural default and statute of
21 limitations arguments, all of which are reserved.

22 **II. PETITIONER’S CLAIMS**

23 **A. Claims Arising from the Trial Court’s Failure to Appoint Second** 24 **Counsel (Claims 1 and 2)**

25 In claim 1, Petitioner says the trial court violated federal due process by denying
26 his requests for appointment of a second trial attorney. (Am. Pet., at 33-52).

27 Petitioner raised the state court analogue to claim 1 on direct appeal (*See*
28 Appellant’s Opening Brief, at 19-33 [Lodged Doc. # B1]), as claim 1 of his second state

1 habeas petition (Petition for Writ of Habeas Corpus, filed Jan. 8, 2004, *In re Staten*, Cal.
2 S. Ct. Case No. S121789, at 45-68 [Lodged Doc. # D1]), and as claim 1 of his third state
3 habeas petition. (Petition for Writ of Habeas Corpus, filed Mar. 8, 2006, *In re Staten*,
4 Cal. S. Ct. Case No. S141678, at 47-73 [Lodged Doc. # E1]). On direct appeal, the
5 California Supreme Court denied the claim on the merits. *See People v. Staten*, 24
6 Cal. 4th at 448 n.1 (“[Petitioner] further claims that the summary denial of his
7 application for second counsel and the reduction or denial of funding requests violated
8 his rights under the Fifth, Sixth, and Fourteenth Amendments to the United States
9 Constitution and article I, section 15 of the California Constitution. The points are
10 lacking in merit. The superior court did not abuse its discretion; there is thus no
11 predicate error on which to base the constitutional claims.”). The state court denied
12 claim 1 of Petitioner’s second and third state habeas petitions on the merits and on
13 procedural grounds. (Order, filed Jul. 13, 2005, *In re Staten*, Cal. S. Ct. Case No.
14 S121789 [Lodged Doc. # D4] (second state habeas); Order, filed Dec. 20, 2006, *In re*
15 *Staten*, Cal. S. Ct. Case No. S141678 [Lodged Doc. # E6] (third state habeas)).

16 Petitioner seeks an evidentiary hearing on this claim. (Ptr’s Motion for
17 Evidentiary Hearing, *supra*, at 27-35). Respondent seeks dismissal of the claim on the
18 ground that it fails to survive review under 28 U.S.C. § 2254(d). (Rsp’s Mot. Dis., at
19 17-23).

20 In Claim 2, Petitioner contends the trial judge's denial of his request for a second
21 appointed trial attorney violated the Fourteenth Amendment Equal Protection Clause.
22 (Am. Pet. at 52-56). Petitioner presented the state court analogue to claim 2 to the
23 California Supreme Court as claim 2 of his second state habeas corpus petition.
24 (Petition for Writ of Habeas Corpus, filed Jan. 8, 2004, *In re Staten*, Cal. S. Ct. Case No.
25 S121789, at 68-73 [Lodged Doc. # D1]). The California Supreme Court rejected the
26 claim both on the merits and on procedural grounds in an unreasoned decision. (Order,
27 filed Jul. 13, 2005, *In re Staten*, Cal. S. Ct. Case No. S121789 [Lodged Doc. # D4]).
28 Petitioner initially sought, but has now withdrawn his request for, an evidentiary hearing

1 in this Court on this claim. (Ptr's. Motion for Evidentiary Hearing, *supra*, at 28; Petr's
2 Reply to Opp. to Mot. for Evid. Hrg. at 1, 50-51). However, Petitioner does not
3 concede that the claim is without merit; rather, Petitioner withdrew his request for
4 evidentiary hearing because:

5 [N]o evidentiary hearing is necessary because there are no
6 outside the record facts that need to be developed and
7 presented to the Court. The claim is a legal claim founded
8 entirely on facts contained in the trial record. Accordingly,
9 petitioner withdraws his request for an evidentiary hearing on
10 this claim, and reserves further argument with respect to this
11 claim until final argument on the merits of his claims.

12 (Ptr's Rpy. on Evid. H. Mot., at 51). Respondent seeks dismissal of the claim on the
13 grounds of procedural bar and that it fails to survive review under 28 U.S.C. § 2254(d).
14 (Rsp's. Motion to Dismiss, at 24-30).

15 ///

16 **1. Background**

17 Claims 1 and 2 arise out of the same operative facts: On April 25, 1991,
18 Petitioner filed a "Confidential Application for Appointment of 2nd Counsel." (3 C.T.
19 901-05). An accompanying declaration by Petitioner's appointed defense counsel,
20 private attorney, John Tyre, stated:

21 I am representing Deondre Staten in the above numbered case
22 and it has become evident after the preliminary hearing that
23 there are both serious issues for the guilt and penalty phases of
24 this trial. It is therefore necessary for the court to allot funds
25 to cover the cost of a second attorney to handle different parts
26 of both phases of this trial.

27 (3 C.T. 903). On June 5, 1991, Petitioner filed another confidential application for
28 appointment of second counsel, specifically naming Gerald Gornik as the second

1 counsel Petitioner wished to have appointed. (3 C.T. 906-10). In all other respects, the
2 application and supporting declaration were identical to the first. (3 C.T. 906-10).

3 On June 12, 1991, Petitioner's counsel argued briefly in support of his request for
4 second counsel:

5 Since the court has had a chance in reading the 995, going
6 over the transcript, the court can see the People's case is
7 strictly circumstantial evidence, the possible inferences, the
8 possible investigation, the numerous people that were used at
9 the preliminary hearing and all the investigation that would be
10 necessary in a guilt phase, I just would request the assistance
11 of a second counsel to help me prepare if in case a penalty
12 phase is necessary. [¶] It's not a clear-cut guilt phase, your
13 honor. There's a lot of work to be done.

14 (1 R.T. 31-32). The trial judge responded:

15 No, it's not a clear-cut guilt case from the standpoint of the
16 fact that it's a circumstantial evidence case, but it's a fairly
17 straightforward case with not tremendous legal issues,
18 complex issues involved, and the court finds that it is not a
19 denial of due process for the court to refuse the appointment of
20 a second counsel. [¶] Based upon that, the application is
21 denied.

22 (1 R.T. 32). Petitioner made no further efforts to renew his request for second counsel.

23 Petitioner presented the state court analogue to this claim to the California
24 Supreme Court on direct appeal. (App. Op. Br., at 19-33 [Lodged Doc # B1]). In its
25 explained, published opinion on direct appeal, the California Supreme Court found the
26 trial court did not abuse its discretion under state law. *People v. Staten*, 24 Cal. 4th at
27 446-47. Specifically rejecting Petitioner's federal due process theory and his claim he
28 was denied his Sixth Amendment right to counsel, the California Supreme Court held

1 that the superior court did not abuse its discretion; “there is thus no predicate error on
2 which to base the constitutional claims.” *Id.* at 448 n.1.

3 Petitioner presented his due process claim to the California Supreme Court a
4 second time in his second state habeas corpus petition. (Petition for Writ of Habeas
5 Corpus, filed Jan. 8, 2004, at 45-67, *In re Staten*, Cal. S. Ct. Case No. S121789 [Lodged
6 Doc. # D1]). The California Supreme Court denied that claim on its merits for failure to
7 state “a prima facie ca[se] for relief” and on procedural grounds. (Order, filed Jul. 13,
8 2005, *In re Staten*, Cal. S. Ct. Case No. S121789 [Lodged Doc. # D4]).

9 The California Supreme Court denied the state court analogue to claim 2,
10 Petitioner’s claim that denying him second counsel violated equal protection, “on the
11 merits for failure to state a prima facie case for relief.” (Order, filed Jul. 13, 2005, *In re*
12 *Staten*, Cal. S. Ct. Case No. S121789 [Lodged Doc. # D4]).

13 2. Legal Analysis

14 Because claims 1 and 2 do not survive review under Section 2254(d), the Court
15 may deny them on that basis without addressing Respondent’s other arguments.
16 *Franklin v. Johnson, supra*, 290 F.3d at 1232.

17 (a) Due Process (Claim 1)

18 As Petitioner concedes (Ptr’s. Opp., at 103 (“The Sixth Amendment to the United
19 States Constitution has not yet been held to require the appointment of more than one
20 attorney to represent an indigent where a capital crime is charged.”) (emphasis in
21 original); Ptr’s. Mot. for Evid. Hrg. at 28 (“although the federal Constitution does not
22 guarantee second counsel in a capital case, . . .”)), the federal Constitution does not,
23 itself, mandate the appointment of a second defense attorney in the trial of a capital case.
24 *See Riley v. Taylor*, 277 F.3d 261, 307 (3d Cir. 2001) (“We are aware of no authority
25 holding that the federal Constitution confers” a right to appointment of two lawyers in
26 capital cases; “[t]he Constitution does not specify the number of lawyers who must be
27 appointed”).

28 The Fourteenth Amendment Due Process Clause does, however, protect against

1 the “arbitrary deprivation” of a liberty interest to which a defendant is “entitled under
2 state law.” See *Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980). Resting on this principle,
3 Petitioner argues that California’s statutory grant of a right to second counsel in capital
4 cases is a “liberty interest” which due process prohibits the state from denying
5 arbitrarily. (Prt’s. Opp., at 100-110; Ptr’s. Evid. H. Mot., at 28 (“[P]etitioner contends
6 that the denial of his state law entitlement to second counsel – a state created right in
7 which he had a ‘liberty interest’ – violated his federal right to fundamental fairness
8 under *Hicks v. Oklahoma* [citation omitted], and its progeny. Petitioner alleges that,
9 although the federal constitution does not guarantee second counsel in a capital case, the
10 State of California, having chosen to create such a right in its jurisprudence and by
11 statute, cannot arbitrarily withhold that entitlement without implicating federal due
12 process rights.”)).

13 Petitioner relies on *Hicks v. Oklahoma*, 447 U.S. 343 (1980), in which the Court
14 found that a defendant's sentence was imposed in violation of the Fourteenth
15 Amendment due process clause, which protects against arbitrary deprivation of liberty
16 by the state. In *Hicks*, the jury, which was given the discretion under state law to
17 impose punishment, was instructed under a habitual offender statute, later declared to be
18 unconstitutional, to sentence the petitioner to a mandatory forty years. Had the jury
19 been properly instructed, it could have imposed a sentence of not less than ten years.
20 The Court reasoned that the petitioner's interest in the process of the exercise of a jury's
21 discretion as to penalty that was created by state law was not merely a matter of state
22 procedural law because the petitioner had a “substantial and legitimate expectation that
23 he will be deprived of his liberty only to the extent determined by the jury in the
24 exercise of its statutory discretion,” and that the “liberty interest is one that the
25 Fourteenth Amendment preserves against arbitrary deprivation by the State.” 447 U.S.
26 at 346. The Court concluded that the petitioner was denied his right to the jury's
27 judgment and that a state appellate court’s conclusion that a jury might have imposed a
28 sentence as harsh as that mandated by the invalidated habitual offender statute was “frail

1 conjecture” as to what a jury might have done, and an arbitrary disregard of the
2 defendant's right to liberty. *Id.* at 345–46.

3 “A liberty interest may arise from either of two sources: the due process clause
4 itself or state law.” *Carver v. Lehman*, 558 F.3d 869, 872 (9th Cir.) (internal quotation
5 marks and citation omitted), *cert. denied sub nom. Carver v. Vail*, ___ U.S. ___, 130 S. Ct.
6 466 (2009). “[T]o create a liberty interest protected by due process, the state law must
7 contain: (1) substantive predicates governing official decision making, and (2) explicitly
8 mandatory language specifying the outcome that must be reached if the substantive
9 predicates have been met.” *Bonin v. Calderon*, 59 F.3d 815, 842 (9th Cir.1995)
10 (internal quotation marks and citations omitted), *cert. denied*, 516 U.S. 1051 (1996).
11 Further, where “[t]he only explicitly mandatory language in [the state statute at issue]
12 concerns a procedural right . . . [, t]hat language cannot create a liberty interest within
13 the meaning of the Fourteenth Amendment because expectation of receiving process is
14 not, without more, a liberty interest protected by the Due Process Clause of the
15 Fourteenth Amendment.” *Carver*, 558 F.3d at 875 (holding that a state statute outlining
16 options for parole eligibility only gave rise to a procedural right) (internal quotation
17 marks, footnote, italics and citations omitted); *see Olim v. Wakinekona*, 461 U.S. 238,
18 250 (1983) (“[A] liberty interest is of course a substantive interest of an individual; it
19 cannot be the right to demand needless formality.”) (internal quotation marks, brackets,
20 footnote and citation omitted); *Bonin*, 59 F.3d at 842 (“[T]o contain the requisite
21 substantive predicates, the state law at issue must provide more than merely procedure;
22 it must protect some substantive end.”) (internal quotation marks and citation omitted).
23 “The denial of state-created procedural rights is not cognizable on habeas corpus review
24 unless there is a deprivation of a substantive right protected by the Constitution.”
25 *Bonin*, 59 F.3d at 842.

26 Even if a state statute creates a constitutionally protected liberty interest, a state
27 court finding there was no violation of state law, and hence no arbitrary deprivation of a
28 state-created liberty interest, binds a federal court sitting in habeas review. *See*

1 *Bradshaw v. Richey*, 546 U.S. 74, 76 (2005) (per curiam) (“[A] state court’s
2 interpretation of state law, including one announced on direct appeal of the challenged
3 conviction, binds a federal court sitting in habeas corpus.”); *Hicks on behalf of Feiock v.*
4 *Feiock*, 485 U.S. 624, 629–30 (1988) (“We are not at liberty to depart from the state
5 appellate court’s resolution of these issues of state law. Although petitioner marshals a
6 number of sources in support of the contention that the state appellate court misapplied
7 state law on these two points, the California Supreme Court denied review of this case,
8 and we are not free in this situation to overturn the state court’s conclusions of state
9 law.”) (footnote omitted).

10 Here, the California Supreme Court’s adjudications of the state court analogue to
11 claim 1 on direct appeal and habeas corpus did not contradict or unreasonably apply
12 United States Supreme Court authority or depend upon an unreasonable finding of facts.
13 28 U.S.C. § 2254(d).

14 On direct appeal, the California Supreme Court outlined and applied the relevant
15 state law:

16 In *Keenan v. Superior Court*, we held that a trial court may
17 appoint a second attorney in a capital case. ‘If it appears that a
18 second attorney may lend important assistance in preparing for
19 trial or presenting the case, the court should rule favorably on
20 [a] request. Indeed, in general, under a showing of genuine
21 need . . . a presumption arises that a second attorney is
22 required.’ ‘The initial burden, however, is on the defendant to
23 present a specific factual showing as to why the appointment
24 of a second attorney is necessary to his defense against the
25 capital charges.’ An ‘abstract assertion’ regarding the burden
26 on defense counsel ‘cannot be used as a substitute for a
27 showing of genuine need.’

28 *People v. Staten*, 24 Cal. 4th at 447 (internal citations omitted). The court held: